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Regulation of intrastate rates

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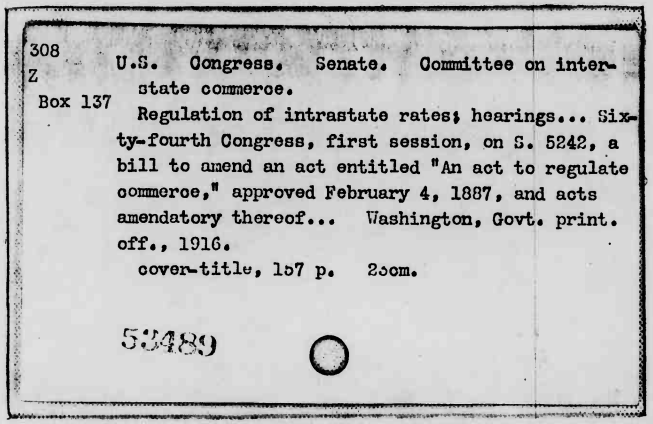

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REGULATION OF INTRASTATE RATES

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HEARING

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE
UNITED STATES SENATE

SIXTY-FOURTH CONGRESS

FIRST SESSION

ON

S. 5242

A BILL TO AMEND AN ACT ENTITLED "AN ACT TO REGULATE COMMERCE," APPROVED FEBRUARY 4, 1887, AND ACTS AMENDATORY THEREOF

Printed for the use of the Committee on Interstate Commerce

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916.

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REGULATION OF INTRASTATE RATES.

FRIDAY, JUNE 30, 1916.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met in room 326, Senate Office Building, at 10 o'clock a. m., pursuant to call, Senator Francis G. Newlands presiding.

Present: Senators Newlands (chairman), Pomerene, Clapp, Cummins, Brandegee, Townsend, and Poindexter.

Also present: Senators Sheppard and Broussard.

Also present: Messrs. J. A. Morgan, representing the Texas commission and city of Houston, Tex.; Ed. P. Byars, of the Fort Worth Freight Bureau, Fort Worth, Tex.; H. H. Haines, representing the Galveston Commercial Association, Galveston, Tex.; Robert R. Prentis, president of the National Association of Railway Commissioners, and chairman of the Virginia Railroad Corporation, Richmond, Va.; Lawrence B. Finn, chairman of the Kentucky Railroad Corporation, Franklin, Ky.; Earle B. Mayfield, representing the Railroad Commission of Texas, Austin, Tex.; W. M. Barrow, assistant attorney general of Louisiana; Theodore Brent, general manager of the General Traffic Association of New Orleans, New Orleans, La.; George T. Atkins, representing the Chamber of Commerce of Shreveport, Shreveport, La.; Luther M. Walter, Chicago, Ill., attorney at law; and Mr. Alfred P. Thom, representing the Southern Railway Co.

The committee proceeded to consider the bill (S. 5242) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof, as follows:

[S. 5242, Sixty-fourth Congress, first session.]

A BILL To amend an Act entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof, be, and the same is hereby, amended by adding, after the proviso in section one, the following; "*And provided further*, That nothing in this act, nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate, rule, regulation or practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage, or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory as aforesaid, unless and until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate, rule, regulation or practice imposed as aforesaid, to be unreasonable."

The CHAIRMAN. This hearing has been called to consider the bill (S. 5242) introduced by Senator Sheppard. I desire to have certain communications from Senators Sheppard, Ransdell, and Broussard inserted in the record.

(The communication of Senator Broussard referred to is here printed in full, as follows:)

WASHINGTON, D. C., *June 27, 1916.*

Hon. FRANCIS G. NEWLANDS,
Chairman Committee on Interstate Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR: I am inclosing herewith copy of a resolution passed by the board of governors of the New Orleans Joint Traffic Bureau, which I desire to have filed with other papers submitted by this organization.

Yours, very truly,

R. F. BROUSSARD.

RESOLUTION OF THE BOARD OF GOVERNORS OF NEW ORLEANS JOINT TRAFFIC BUREAU, ADOPTED JUNE 22, 1916.

Whereas Senate bill 5242, introduced in the United States Senate by Senator Morris Sheppard, has as its apparent aim the nullifying of the principles announced in the decision of the Supreme Court of the United States, upholding the decision of the Interstate Commerce Commission in the proceeding known as the Shreveport Rate case; and

Whereas in the interest of the commercial welfare of the people and principal cities of Louisiana, the honorable Railroad Commission of Louisiana has prosecuted suits before the Interstate Commerce Commission and the courts with the view of removing the unjust discriminations against Louisiana shippers due to the existence of the favorable intrastate rates in Texas, prescribed by the Texas Railroad Commission and preventing the free exchange of commodities by our shippers with people of the State of Texas, which adjustment is sought to be restored by the Sheppard bill; and

Whereas the Interstate Commerce Commission is the only properly constituted source of relief from discriminating adjustments and practices against interstate commerce; and

Whereas the nullifying of the decisions in the Shreveport rate case, which are in the interest of the public and the commerce of the people of the United States, by the enactment into law of this Sheppard bill would be a serious blow to the freedom of commerce of the people of our State shipping into Texas, and in like manner to shipments between other States: Therefore be it

Resolved, That the New Orleans Joint Traffic Bureau, maintained jointly by the New Orleans Board of Trade (Ltd.), New Orleans Cotton Exchange, the New Orleans Association of Commerce, and the Board of Commissioners of the port of New Orleans, and having for its particular purpose the correction and prevention of unjust and discriminatory freight rates to, from, and through the port of New Orleans, place itself on record as being vigorously opposed to the passage of Senate bill 5242.

Be it further resolved, That this bureau request our Louisiana Senators and Representatives to do all in their power to defeat this bill, and that a copy of this resolution be directed to our Senators and Representatives.

Be it further resolved, That Mr. Theodore Brent, the general manager of our bureau, appear before the Senate committee having this bill in charge, at its hearing on June 30, and present the objections of our commercial interests to its adoption.

(The communication of Senator Ransdell referred to is here printed in full, as follows:)

APRIL 7, 1916.

Hon. FRANCIS G. NEWLANDS,
Chairman Committee on Interstate Commerce, United States Senate.

MY DEAR SENATOR: Confirming the conversation of my secretary with the clerk of your committee, I am inclosing herein a letter from Mr. George T. Atkins, jr., traffic manager of the Chamber of Commerce, Shreveport, La., together with resolutions passed by that organization in regard to Senator Sheppard's bill, S. 5242. Kindly file these papers for consideration by your committee.

Before any action is taken on this measure those opposed to it in Louisiana are anxious to be heard by your committee, and I therefore request that you notify me

if any hearings are to be held or the bill otherwise acted upon. Of course my constituents only desire to be heard in event that it is attempted to report the measure.

Thanking you for your kindness, believe me,

Very sincerely, yours,

JOS. E. RANSDELL.

CHAMBER OF COMMERCE,
Shreveport, La., April 3, 1916.

Hon. JOSEPH E. RANSDELL,
United States Senate, Washington, D. C.

SIR: I have the honor to transmit herewith copy of resolution passed unanimously by the freight and transportation committee of the Shreveport Chamber of Commerce and unanimously adopted by the board of directors of the Shreveport Chamber of Commerce.

The resolution is with respect to bill of Senator Morris Sheppard, recently introduced in the Senate, which if passed will undo the work of the Interstate Commerce Commission, Commerce Court, and Supreme Court in the so-called Shreveport rate case, thereby affecting not only Louisiana interests, but the interests of all border cities located within all States of the Union.

It is our earnest hope that you will give this matter your consideration and that you will do what you consistently may to prevent its passage in the Senate and the House.

Respectfully,

GEO. T. ATKINS, JR., *Traffic Manager.*

RESOLUTION.

Whereas the State of Louisiana for many years was confronted with a rate carrier, erected by the State of Texas, through the arbitrary action of the Railroad Commission of Texas, which had the effect of shutting out Louisiana commerce from the State of Texas; and

Whereas the Louisiana Legislature by resolution accompanied by an appropriation authorized its attorney general to bring suit to test the right of the State of Texas to so discriminate against the commerce of Louisiana; and

Whereas the suit was filed before the Interstate Commerce Commission, and various cities in Louisiana and Texas, together with many commercial bodies, were given permission to intervene in said suit and did intervene, setting up the harmful and disastrous effect of the rate discrimination practiced by the State of Texas against Louisiana commerce; and

Whereas the Interstate Commerce Commission, after full hearing and consideration of the case, decided it in favor of the State of Louisiana, declaring the said rate discrimination practiced by the State of Texas against Louisiana commerce to be illegal; and

Whereas the case was there appealed to the United States Supreme Court, appearing on the docket of that honorable court, styled Houston, East & West Texas Railway Co. *v.* United States (234 U. S. 342), known as the famous Shreveport rate case, and after elaborate argument by many able counsel was decided in favor of Louisiana, and against the right of the State of Texas to discriminate against Louisiana commerce; and

Whereas the State of Texas is now seeking to again bring about a like discrimination against Louisiana commerce, and in furtherance of that purpose, its United States Senator, Hon. Morris Sheppard, has introduced a bill in the Senate of the United States, to so amend the law as to permit the State of Texas to again discriminate against Louisiana commerce, and thereby nullify the decision of the United States Supreme Court heretofore referred to; and

Whereas the chamber of commerce of Shreveport, La., believes the Sheppard bill to be contrary to the spirit of the Federal Constitution and Federal laws, and which bill if enacted into law, would result in great injury and injustice to the people of the State of Louisiana in their commercial intercourse with the people of the State of Texas; and

Whereas the Sheppard bill would work a particular injury to the growth and importance of both Shreveport and New Orleans, for these cities are by reason of their peculiar locations—the natural gateways—for the trade of East Texas, and the effect of writing into our Federal law of the Sheppard bill, would be to completely close these avenues of trade as between the two States: So therefore be it

Resolved, That the Chamber of Commerce of Shreveport, La., representing the varied business interests of the city of Shreveport, La., declares its opposition to the Shep-

pard bill as being inimical to the welfare of the people of the State of Louisiana, and of Shreveport in particular; and

Be it further resolved, That the people of Shreveport, speaking through the Chamber of Commerce, earnestly urge Louisiana's two United States Senators, and our Congressmen to vigorously oppose the enactment into law of the Sheppard bill; and

Be it further resolved, That a copy of this resolution be sent to United States Senators Joseph E. Ransdell, and Robert F. Broussard, and to Congressmen John T. Watkins, Riley Wilson, H. Garland Dupré, James B. Aswell, Albert Estopinal, L. L. Morgan, L. Lazaro, and W. P. Martin.

Freight and transportation committee, M. S. Bass, B. F. Kahl, C. L. Campbell, H. M. Weil, R. L. Mayfield, W. K. Henderson, T. G. Sinclair, S. B. Hicks, C. D. Kahnbach, *Chairman*. Shreveport Chamber of Commerce, by W. N. Booth, *President*. Attest: J. Ed. Howe, *Secretary*.

SHREVEPORT, LA., *March 26, 1916.*

(The communication of Senator Sheppard referred to is here printed in full, as follows:)

JULY 5, 1916.

Senator F. G. NEWLANDS,
United States Senate.

MY DEAR SENATOR NEWLANDS: Please include the inclosed letter as a part of the hearings on my amendment to the interstate commerce act.

With all good wishes, I am,
Yours, very sincerely,

MORRIS SHEPPARD.

FORT WORTH, TEX., *June 26, 1916.*

Hon. MORRIS SHEPPARD,
Washington, D. C.

DEAR SIR: I will not be present at the hearing on June 30, when your bill amending the interstate commerce act will come up, but I inclose you herewith, which you doubtless have received from other sources, a pamphlet which contains my argument before the Interstate Commerce Commission in the Shreveport case, recently submitted, which pamphlet also contains other matters respecting the case, and on the last page contains a proviso as an amendment to the first section of the act, which I think fully covers the object of the proposed amendment, and I hand the pamphlet to you with the request that you file it as part of the proceedings to be printed in connection with this hearing. Will thank you to have copy of the printed proceedings sent to me.

No such colossal misfortune could befall the State of Texas as to subject all of the transportation within the State to some fixed rule of mileage scale or otherwise, which would not take care of our interests arising from the great distances traversed by our railroads within this State, supplying the people in one part of it with the products of another, absolutely essential to its development.

I do not believe when the people duly consider, after having informed themselves on the facts, the necessity and advantage of complete State regulation on the exclusive intrastate business, that they will be in favor of surrendering it. I can readily see how the railroads desire the monopoly of the business with the long-distance hauls, and that great manufacturing concerns at centers of manufacture, and great merchants at centers of trade will desire to hold a grip on the business of the country that would place it beyond the power of a State to so regulate its rates as to encourage manufacture and development which would afford competition, and likewise so adjust the interstate commerce as to place it entirely within the rail-haul traffic, effectually destroying any lower basis of rates from our ports to the interior, whereby we might reap the benefit of port-to-port rates made by this State, at least to give us the benefit of our ports.

The necessity of the amendment which you have proposed is illustrated by the pamphlet which I hand you herewith. A careful reading of it will show that for a mere additional 20 miles from the Texas line to Shreveport that it is contended that the finding of discriminations furnishes the ground for the Interstate Commerce Commission to reach out and grasp the entire rate-making classification and therefore all matters pertaining to transportation wholly within the State. It would mean that every cattle raiser, every wheat grower, every cotton grower, and farmer producing the great variety of grains and farm products, desiring to dispose of the same to localities far distant and upon a basis of rates which would upbuild the country, and in the end upbuild the railroads under wise and far-seeing management, would have to go to Washington to seek relief and in every way would upset what this state has done as a pioneer in railroad regulation.

If I were in Congress of the United States I would use every effort to secure the amendment so as to allow our own State to control our own affairs. Without controverting the existing powers of the Interstate Commerce Commission, though I think it open for most serious doubt, to step in to the State of Texas, for example, and regulate all our internal rates, I would say, (1) that it ought not to be exercised, surely in a case like the Shreveport case; (2) that if the power exists within the meaning of the interstate commerce law as is held by the Supreme Court, the law should be so amended as to leave to the State the right to regulate all of the rates and charges, classification, and matters pertaining to transportation of purely State traffic. As long as I am a citizen of the State of Texas I shall stand squarely by this proposition, so vital to our prosperity and, as I believe, to the prosperity of the Nation as a whole. After many years of experience and observation pertaining to the matters of various amendments of the act to regulate commerce, and, as I think I may fairly say, to the subject matter of rates and transportation generally, I hold to this conclusion and I firmly believe, that were the subject matter and the effect of destroying State regulation and State commissions understood by the people of our State and others similarly situated, 90 per cent of them would be of the same opinion. While the rights of the State are wholly blotted out with respect to interstate traffic which arises from the power of Congress under the Constitution; and while it is proper that it should be so, no corresponding benefit to the people of the different States could arise by turning over the State rates and traffic to the Federal Government which would be comparable to the disadvantage which would follow.

Very respectfully,

S. H. COWAN.

The CHAIRMAN. I also present a letter from Mr. Thos. P. Littlepage, inclosing a resolution passed by the State Assembly of Louisiana, which will be printed in the record.

(The letter referred to is here printed in full, as follows:)

JUNE 23, 1916.

Hon. FRANCIS G. NEWLANDS,
Chairman Committee on Interstate Commerce, United States Senate,
Washington, D. C.

MY DEAR SENATOR: I am inclosing herewith for your consideration copy of a resolution (No. 13) passed by the Senate of the State of Louisiana protesting against the passage of Senate bill 5242, introduced by Senator Sheppard.

Very respectfully,

T. P. LITTLEPAGE.

[Copy.]

RESOLUTION PASSED BY GENERAL ASSEMBLY OF STATE OF LOUISIANA.

[Senate concurrent resolution No. 13, by Mr. Smith.]

Whereas there is now pending in the Senate of the United States a bill introduced by Senator Morris Sheppard which has for its object and purpose the nullification of the law as declared in the now famous Shreveport rate case; and

Whereas the General Assembly of Louisiana by resolution, and appropriations made for the purpose, had the suit brought that wiped away the rate barrier erected by the State of Texas against Louisiana commerce at the State line; and

Whereas the future prosperity of a large part of the population of Louisiana, together with the welfare of the cities of New Orleans, Shreveport, Monroe, and Alexandria are indissolubly linked with the matter of freight rates; and

Whereas, if the Sheppard bill now pending in the United States Congress should be enacted into law, the effect of the rate fight already won would be nullified: Therefore be it

Resolved by the Senate (the House of Representatives concurring), That the General Assembly of Louisiana earnestly urge its United States Senators and Representatives in Congress to vigorously oppose the passage of Senate bill 5242 introduced by Senator Morris Sheppard and now pending before the Committee on Interstate Commerce, and that copies of this resolution be forthwith forwarded to Louisiana's Senators and Congressmen upon the passage of this resolution.

Senator SHEPPARD. Mr. Chairman, this bill embodies in substance a resolution adopted by the National Association of Railroad Commissioners at its meeting in Washington in 1914. The adoption of the resolution was moved by the railroad commissioner from Texas, Hon. William D. Williams. Hon. Robert R. Prentis, president of the National Association of State Railroad Commissioners and chairman of the Railroad Commission of Virginia, is here, as are Mr. Lawrence B. Finn, chairman of the Kentucky Railroad Commission and chairman of the committee on Federal and State Relation of the National Association of Railroad Commissioners, composed of the Interstate Commerce Commission; the State railroad commissioners and certain officials of the railroad accounting bureau as honorary members. Mr. Ed. P. Byars is also present, representing the Traffic Association of Fort Worth, Tex., also a number of representative gentlemen who represent the other side, who will ask to be heard. Other gentlemen, desiring to be heard, will arrive during the day.

Mr. Chairman, I shall confine my remarks to a brief statement of the case, or rather of the controversy out of which this proposed legislation grows. I realize that the time is limited, and I wish the chairman of the National Association of Railroad Commissioners to be heard more at length, inasmuch as the question is a national one. The so-called Louisiana-Texas controversy is a mere incident to the fundamental issue.

Senator TOWNSEND. I understand there are gentlemen here opposing the proposition, and I imagine the committee would like to hear from them.

Senator SHEPPARD. I simply want to state the facts out of which the controversy grows and then I will yield the floor.

The CHAIRMAN. Of course the committee will yield to you with pleasure in that matter. How many gentlemen would you like to be heard?

Senator SHEPPARD. On my side there are two who will be heard at some length, and others at not so great length.

Mr. BARROW. Mr. Chairman, the committee is represented here by Mr. Walter, who is special counsel in this case and Mr. George T. Atkins, traffic manager of the Shreveport Chamber of Commerce; Mr. Theodore Brent, and myself representing the State railroad commission and State Legislature.

We shall of course be pleased to accept such time as the committee may be pleased to give us and divide it among ourselves to the best advantage. I would like to say this, while I am speaking, that it is very necessary that I should leave Washington to-morrow night, and whatever statement I have to make must be made between now and then, as there is important business which demands my return to Louisiana.

Mr. THOM. I think all of these gentlemen who have been mentioned, having come from distant places, should be given the right of way. At the same time if this bill is to be considered, I, as representing the Southern Railroad, would like to have an opportunity to be heard. I return here at very great personal inconvenience this morning in order to be here, and it is necessary for me to leave town again for imperative reasons this afternoon, so I would like to have the opportunity some time next week, if these gentlemen consume the time to-day, to present the views which the railroads entertain with respect to this matter.

The CHAIRMAN. I presume there is no objection, of course, to that.

STATEMENT OF HON. MORRIS SHEPPARD, A SENATOR FROM THE STATE OF TEXAS.

Senator SHEPPARD. Mr. Chairman, in view of the shortness of time I shall make a very brief statement.

The amendment I have introduced is made necessary by the decision of the Interstate Commerce Commission in a proceeding brought by the Railroad Commission of Louisiana, the decision having been rendered on March 11, 1912.

The complaint of the Louisiana Railroad Commission was based on the fact that the rate from Dallas and other Texas points into eastern Texas were lower than the rates into Texas from Shreveport for equal distances. The defendant carriers, the Texas & Pacific, and the Houston, East & West Texas Railways, operated lines from Shreveport, La., to Dallas, Tex., and from Shreveport, La., to Houston, Tex., respectively. It was shown that for 60 cents first-class traffic was being carried from Dallas eastward to other Texas points, a distance of 160 miles, while from Shreveport, La., to Texas points the same amount would carry the same traffic only 55 miles.

The defendant carriers claimed that they were required to apply the rates out of Dallas and Houston by the Texas Railroad Commission.

The Interstate Commerce Commission held that the situation constituted an unjust discrimination against Shreveport and ordered the railways heretofore mentioned to charge no higher rates from Shreveport, La., to Texas points than the rates from Texas points eastward and northeastward to other Texas points for like distances. The commission established a scale of rates from Shreveport to Texas points for a distance of 182 miles on the Texas & Pacific Railway and 230 miles on the Houston, East & West Texas Railway.

Let me say here that Shreveport is situated in northwestern Louisiana, about 20 or 30 miles from the eastern border, while Dallas is in north central Texas, about 160 miles west from the east Texas border. Houston is about 250 miles southwest of Shreveport, about 230 miles of the distance being in Texas.

Three of the seven members of the Interstate Commerce Commission, Clements, Harlan, and McChord, dissented from the finding in the case, holding that the commission had no jurisdiction over State rates.

The action of the commission was upheld by the United States Supreme Court (234 U. S., 342). The court said [reading]:

> So far as these interstate rates conformed to what was found to be reasonable by the commission, the carriers are entitled to maintain them, and they are free to comply with the order by so adjusting the other rates to which the order relates as to remove the forbidden discrimination. But this result they are required to accomplish.

The court held that the provision of section 1 of the interstate commerce act that said act had no application to transportation wholly within a State had "appropriate reference to exclusively intrastate traffic, separately considered, and that that act was not limited by this premise when interstate commerce itself is involved."

In 1914 the Railroad Commission of Louisiana endeavored, by petition duly brought, to have the principles defined in the rulings of the Supreme Court and the Interstate Commerce Commission before quoted applied to the entire territory of Texas. The Interstate Commerce Commission refused this plea, but marked off a large section of the State by drawing a line from Gainesville south to the Brazos River and thence down the Brazos to its mouth, and applied the rules established by the decisions already described to the territory between that line and the western border of Texas. The commission held that in this territory commodity rates should not be greater than class rates, and that the western classification should be observed.

Vigorous objections came from Texas, and the commission ordered the entire matter reopened, the Louisiana commission urging that the rulings before alluded to be extended to all of Texas. This further investigation is still pending, and in the meantime the new rates have been suspended to await final decision. Such is the situation to-day.

Regardless of what the decision may be, the fact remains that the United States Supreme Court has held that the control of the Federal Government over interstate commerce means control over intrastate commerce, or commerce wholly within the State. This means that rates on hauls inside a State must depend primarily on rates on hauls originating outside a State. It means that State boundaries are mere fiction and that State sovereignty is an empty name. The State of Texas has large and growing ports through which its wholesale centers receive goods for distribution among its people. And yet it makes no difference how low these inbound rates may be, how efficient the terminal and rail service may be from port to warehouse, how great the volume of business developed at these centers may be, how great and how legitimate the desire to build up enterprises by allowing the lowest consistent rate of carriage to points of delivery—if any or all these factors justify a rate to points within the State lower than the rate from a point outside of the State to the same points, although the point outside the State may not have a single factor in its favor equaling those I have mentioned, the rates from Texas centers to points in Texas must be kept at a parity with the rates from the point outside the State to the same points in Texas. The progress of 5,000,000 people, occupying 265,000 square miles of the most promising territory on the globe, must be subordinated to the interests of a far inland city, of 35,000 people, in another State.

I have nothing but admiration for Shreveport. My frequent visits there have increased my admiration for its progressive and patriotic people. It has no right, however, to ask that the rate system, builded slowly and ably by the Texas Railroad Commission and adapted to Texas conditions, shall be overturned in order to promote its commercial fortunes.

The Texas Railway Commission can not, under the law, establish any rate unfair to the railroads or the people of Texas; any rate not productive of a fair return on the capital invested in their construction and operation. The State of Texas, through both its own and the Federal Constitution, has authorized its commission to supervise, establish, and regulate railway rates under these conditions. Under the division of powers peculiar to the present system of American

Government, Texas has the right to control the rates on shipments entirely within its own borders. This right is part of its reserved sovereignty. To say to Texas that you must fashion your State rates from the standpoint of the interests of another State, and not your own, is to deny that Texas has any identity as a State.

As long as the Texas Railroad Commission fixes rates that are fair to the people and the carriers alike, it lies in nobody's mouth to say that they must rearrange them because interests outside of the State claim injury.

If we consider it desirable to have the Interstate Commerce Commission control intrastate rates, let an amendment to the Constitution be proposed in the usual way and let the States say whether they wish to surrender the rights they now possess in this regard. Let not the rights be invaded by a process of slow and stealthy usurpation, in violation alike of the Constitution of the Union and the principles of State identity, State unity, and State integrity.

Mr. Chairman, I ask that the Hon. Robert R. Prentis, president of the National Association of Railway Commissioners and chairman of the Virginia Commission, be heard now.

The CHAIRMAN. The committee will hear Mr. Prentis.

STATEMENT OF MR. ROBERT R. PRENTIS, PRESIDENT NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS, RICHMOND, VA.

Mr. PRENTIS. Mr. Chairman and gentlemen of the committee: The occasion is worthy of the very best of preparation that a man can give it, but personally I am here rather as the representative of the National Association of Railway Commissioners, for such effect and influence as that may have, rather than to make an argument upon the great question which is before you. I insist that the National Association of Railway Commissioners is not an organization of State railroad commissions organized for the purpose of oppressing the railroads or of entering into controversies with the Interstate Commerce Commission. It is a great national association as its name implies. The members of the Interstate Commerce Commission are members of that association. They are upon the committees of that association, and, of course, the name indicates that the State railroad commissioners all over the country are represented there.

I say that there is a great question that is far-reaching——

Mr. THOM. May I ask you a question if I do not interrupt you?

Mr. PRENTIS. Certainly.

Mr. THOM. You do not mean to suggest by that that the Interstate Commerce Commission is in favor of this bill, do you?

Mr. PRENTIS. I do not, nor do I mean to say that they are not in favor of the bill. There was a protracted discussion of this bill upon the floor of the National Association of Railroad Commissioners, and the members of the Interstate Commerce Commission were present and interested in the discussion, but for reasons of delicacy they declined to vote upon the resolution or to take any part in the discussion. But it must not be forgotten, when you ask how the Interstate Commerce Commission feels about this bill, that three of the four members of the Interstate Commerce Commission dissented in the Shreveport case. The truth is, gentlemen, that the

Interstate Commerce Commission is already overwhelmed with work, and will be further overwhelmed if the principle of the Shreveport case is permanently fixed in our law. As I was about to state when interrupted, it is very much more than a controversy between the State of Texas and the State of Louisiana about rates out of Shreveport. Since that decision was rendered, the Interstate Commerce Commission has rendered at least three decisions along the same line, very much more far-reaching. They have practically taken charge of intrastate rates in the State of Arkansas and upset the whole system of rates. So I say that the issue must be met.

There has been, through the newspapers and through the far-reaching organizations of this country for several years past, a determined and persistent effort to change our whole system of railroad regulation. If those who promote that effort succeed, the work of the last 30 years in the States of this Union, seeking to control the railroads, will be lost. If they succeed in doing it, you will immediately begin at the bottom to build in every State of this Union, and in every locality of this Union, something to correspond with what the States have been doing for 30 years, for I repeat that it is absolutely impossible for a commission of seven or nine men sitting in Washington, or for a commission of nine men divided between three districts, sitting in different parts of the country, to intelligently consider all of the various questions that are constantly arising with reference to local affairs and local rates. I hate to deal with figures unless I have verified them, but just in my own mind, I think, I have seen somewhere a statement that there were 365,000 rate sheets—rate schedules filed with the Interstate Commerce Commission every year. Whether there are that many or not, the number is enormous. No one man can possibly keep up with it. It is just a great mass of information, a mass of rates that no clerk has been able to classify so as to be certain of what a rate is. It is a most complicated proposition, and to pile on top of all of that detail that the Interstate Commerce Commission now has to do all of the business that the State commissions are doing with reference to local rates is simply to pile a burden upon the Interstate Commerce Commission that can not possibly be carried. The railroads and the public now complain, and complain bitterly, that the work of the Interstate Commerce Commission is not done by the commission, but that it is done by subordinates. The commission is not responsible for this. The commission can not help it, because the mass of work is so great, and the proposition is to increase that burden.

This resolution or bill of Senator Sheppard's of course was brought about by the Shreveport-Texas case. It was not intended by the national association to be a solution of these great problems, but it was intended to call the attention of the country to the great question which is involved here.

We have this unsatisfactory state of affairs, that a State legislature in its sovereign capacity, and by virtue of its rate-making power, or State commission, fixes a system of rates in a State, and the Interstate Commerce Commission sends out an examiner to some far-distant State to investigate rates. That examiner, a man of average capacity for such work, takes thousands or possibly tens of thousands of pages of testimony, and brings it back here to the Interstate Commerce Commission with a report which,

I understand, is not made public, and upon that report some sort of decision is made by the Interstate Commerce Commission, under the authority of the act to regulate commerce, by which the act of the legislature of a State is set aside. I know it is a great revolution which is proposed, which is going on. I know that when Senator Reagan wrote into the act to regulate commerce [reading]—

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property or to the receiving and delivery, storage, or handling of property wholly within one State, and not shipped to or from a foreign country, from or to any State or Territory as aforesaid—

he thought that the right of the State to regulate intrastate rates was secure. I know that from time to time since, as efforts have been made to amend or repeal that proviso, or to omit it from the bill, the States have come down to Washington and convinced the Congress that the time had not come to make such a change in our system. I know that the Congress of the United States were ignorant of the fact that they were giving the Interstate Commerce Commission the right to control intrastate rates.

I am not criticizing the reasoning or the logic of the Supreme Court of the United States. Possibly it is reasonable. But that reasoning and that logic and these recent decisions shocked that part of the country that believed that the States should regulate their internal affairs, and that part of the country that believes that there are certain things that the State can do better than the Federal Government can do—not, I assure you, the narrow question of State rights, but a question of how the work can be best done. I say that a section of this country has been shocked by that line of decisions.

The Congress of the United States must meet the issue. One of the great political parties has thrown out the challenge, and the present situation is highly unsatisfactory and uncertain. Personally, I believe that as to the regulation of the local matters relating to railroad companies, including local rates, the States are in a better position to do effective work than a central board located in Washington, or any subordinate of that central board, can possibly be. I believe that the system which has been in existence since the foundation of the Government should be continued, but whether continued or not, the issue must be met, and it can not be much longer postponed. The present situation is highly unsatisfactory. We believe that if you will adopt the Sheppard bill you will at least restrain, you will at least stop, you will at least put some little obstacle in the way of this great movement, reaching out after the local rates and local affairs of the State, so that the country may have time to think about it; so that we can decide this question, when we do decide it, rightly, for it is most far-reaching in its consequenees.

Mr. Chairman, I do not know that I feel justified in consuming any more of the committee's time on this occasion. We have present to-day the Hon. Lawrence D. Finn, chairman of the committee on Federal and State legislation of the National Association of Railway Commissioners, and I have asked him to make some statement to the committee.

Senator SHEPPARD. Mr. Chairman, I shall be very glad if Mr. Finn be permitted to address the committee at this time.

The CHAIRMAN. Mr. Finn, you may proceed.

STATEMENT OF HON. LAWRENCE B. FINN, CHAIRMAN OF THE KENTUCKY RAILROAD COMMISSION, FRANKFORT, KY.

Mr. FINN. Mr. Chairman, we wish to disavow that this bill is the result of a controversy between the State Railway Commission of Louisiana and the State Railway Commission of Texas. In 1909, by concert of action on the part of the carriers, they proposed a propaganda to centralize the power of regulating common carriers in the Federal Government. The Minnesota rate case, which was a famous case, was pending and the State Railway Commission of Minnesota prescribed certain intrastate rates. This went to the Federal court, and in the meantime a master in chancery by the name of Otis, filed a report, the effect of which would have practically eliminated the rights of the several States to fix intrastate rates.

This case finally went to the Supreme Court of the United States. In 1911, the governors of the several States held a convention. The importance of the principle involved in the Minnesota rate case was discussed by the governors of the several States who passed a resolution directing that they should intervene as amicus curae to present the side of the States in this matter. In the meanwhile, those who were inclined to federalistic tendencies had another occasion to rejoice in what is known as the decision in the Dallas-Shreveport case.

I will mention the facts briefly that were involved in the Dallas-Shreveport case, not because this bill grows out of the facts in that particular case but because it is illustrative of the conditions that might prevail, in every other State in the Union. The Texas Railroad Commission had fixed certain rates from Dallas to certain Texas points which were served in common by Shreveport. Those rates were voluntarily established by the carriers. They had the right of appeal, but on those rates fixed by the Texas Commission they served the patrons of their road for years. In the meanwhile, Shreveport filed a complaint before the Interstate Commerce Commission alleging that those rates resulted in a discrimination against Shreveport. The Interstate Commerce Commission held that there was a discrimination, and the result of the opinion of the Supreme Court on the review of this case was that the carriers should remove this discrimination by either raising the Texas rate or lowering the Shreveport rate. It is not necessary to tell you that they removed the discrimination by raising the Dallas rate.

Now the point that I wish to make is that there is no necessity for a conflict of authority between the State jurisdiction and the Federal jurisdiction. Those who are inclined to be federalistic in their tendencies can create irreconcilable conflicts, but we insist they do not exist of necessity if you will analyze the conditions that confront this Nation. There can be no discrimination between freight rates unless similarity in transportation conditions exists to the extent that the fixing of one necessarily establishes the reasonableness of the other rate. If transportation conditions, inter and intra, are dissimilar, then rates can be fixed without regard to each other. If a just and reasonable rate has been fixed from Dallas, Tex., to certain common points in Texas, and the same transportation conditions exist from Shreveport to these common Texas points, then the fixing of a just and reasonable rate from Dallas to these points in effect and of necessity establish the reasonableness of the rates to those common points in Texas.

Now, what is the object of this bill to amend the act to regulate commerce? The object is to provide that a court tribunal shall be the final arbiter of all disputed questions. What conditions exist to-day? By the act of one administrative board which has no judicial function except as an incident to its administrative functions, the law of a State is annulled. The object and purpose of this amendment is to prevent the anomaly of one administrative board sitting as a court of review or appeal over another administrative board over which it has absolutely no jurisdiction and to limit the final arbiter in all disputed questions between the States and the Nation to the courts of our land, which, under our Constitution and under our form of government, are the proper tribunals before whom those disputed questions should be settled.

Now, then, what is discrimination? It is the charging of a different rate from and to a common point by railroad companies where transportation conditions are so similar that the rates are related to the extent that a different rate from one point to another point results in a discrimination.

Now I repeat: Suppose transportation conditions are dissimilar. There is no chance for a discrimination, and therefore this question can not be brought to bear upon transportation conditions, inter and intra, where they are dissimilar. If they are similar, what should happen? Why, as soon as the just and reasonable rates are fixed by a State, or by a State railroad commission, then the railroads interested in the controversy have the right to go to the highest court of the land to establish their rights judicially. They have every safeguard and protection of the court. When they have their day in court, and a just and reasonable rate has been established by a judicial act, then that rate should bind all parties, all litigants, and all administrative boards, whether it be a Federal commission or whether it be a State commission. Then, if, as a matter of fact, upon a subsequent investigation the Interstate Commerce Commission finds that the proof justifies the conclusion that there is a similarity of transportation conditions between inter and intrastate rates and that those rates are not similar at the beginning of the investigation, then it is their province to remove this discrimination. How? By fixing a just and reasonable rate to and from the interstate point. What is a just and reasonable rate? Why it is the rate that has been established by the Supreme Court of the United States as a just and reasonable rate, because if they find that transportation conditions are similar then these rates are related to the extent that a different rate is a discrimination. If on the investigation they find that transportation conditions are dissimilar, then without regard to the intrastate rate they can fix a rate which they themselves believe to be just and reasonable.

On the contrary, suppose the State commission fixes a just and reasonable rate and the Interstate Commerce Commission fixes a just and reasonable rate, and the shippers complain of the intrastate rate and the proof is brought before a tribunal showing a similarity of transportation conditions, and the facts justify the conclusions that they are similar, the intrastate rates in turn can be fixed as well as

interstate rates. You can always imagine that some condition would prevail that in all probability would bring about a controversy, but those facts exist more in imagination than in fact. There can be no controversy between the various States by building a wall around the several States in order to protect one State's transportation to the detriment of another State's transportation matters.

Before the National Association of Railway Commissioners it was continuously injected into the argument that a bad motive might prompt a State railway commission to do something that was wrong. I assert that the motives behind the commission in fixing a freight rate is not the criterion. If so, a bad motive might condemn a rate that is just and reasonable and a pure motive might establish a rate that is confiscatory. The only question that the courts are to decide is not what is in a man's heart when he acts officially upon an administrative board but do the facts developed by the proof justify the order of the commission? Is the order just or unreasonable?

Now, there are some who would have us believe that there are 48 different styles of stand and deliver in the several States, and that one State railway commission makes an absurd order and another one conflicting, and that those absurd conditions are presented to the carriers all over the country which results in inconvenience to the public and large expense to the carriers. I say that if the carriers do comply with these absurd and conflicting orders of the several States, they do so voluntarily because the courts will not compel them to do so. But for my part I have never heard of carriers suffering from having to obey one absurd and ridiculous order in one State which was conflicting with another absurd and ridiculous order in another State. The courts have held that if the commission fixes a rule or regulation to remedy a certain public evil that exists, that if that rule or regulation serves the purpose for which it was intended, then the public evil is eradicated, and if another concurrent jurisdiction attempts to provide a different way, the courts must conclude that such subsequent order is unjust and unreasonable. If, as a matter of fact, the order prescribed by the commission is unjust and unreasonable and does not accomplish the purpose for which it was intended, then the courts have declared that it is unjust and unreasonable.

Confirming this statement, I call your attention to the case of the South Covington & Cincinnati Street Railway Co., complainant in error, *v.* The city of Covington, decided by the Supreme Court January 5, 1915.

I will state that the city of Covington by an ordinance attempted to prescribe a certain regulation to regulate the conduct of the operation of a street railway company which served both Covington and Cincinnati [reading]:

> There are other parts of the ordinance which we are of the opinion are within the authority of the State and proper subject matter for its regulation, at least until the Federal authority is exerted. These are the provisions with reference to passengers riding on the rear platform unless the same be provided with a suitable rail or barrier, and as to persons riding on the front platform unless a rail or barrier be provided separating the motorman from the balance of the front platform as well as those provisions with reference to the requirement to keep the cars cleaned and ventilated and fumigated. We think those regulations come within that class in which this court has sustained the right of the local authorities to safeguard the traveling public and to promote their comfort and convenience, and incidentally affecting the interstate business and not subjecting the same to unreasonable demands.

The court further said [reading]:

> As to the regulation affecting the temperature of cars and providing that they shall never be permitted to be below 50° F., the undisputed testimony shows that it is impossible in the operation of the cars to keep them uniformly up to this temperature owing to the opening and closing of the doors and other interferences that make it impracticable. We therefore think upon this showing this feature of the ordinance is unreasonable and can not be sustained.

Here we see already that the supreme law of the land amply protects interstate carriers from unreasonable rules and orders prescribed by local administrative boards.

Now, gentlemen, while I have only touched the outside edge of this great question that your committee must finally determine, I see my time is up and I must conclude.

Senator CUMMINS. Before you conclude I would like to ask you a question or two about the legal aspects of this bill. The board in Texas fixes a rate from Fort Worth, or Dallas, to some other point in Texas, does it not?

Mr. FINN. Yes, sir.

Senator CUMMINS. And you say the railroad companies can appeal to the courts of Texas?

Mr. FINN. Yes, sir.

Senator CUMMINS. If those rates are improperly fixed?

Mr. FINN. Yes, sir.

Senator CUMMINS. They can not do it if the rates were fixed too high, could they? They could not complain of a rate that was so high that it could not be said of it that it fails to return proper compensation for the service?

Mr. FINN. They could complain of the rate if there was no proof, or substantial proof, to sustain the order of the commission. They could also complain of the rate if it was confiscatory in that it did not yield them a fair return upon the property.

Senator CUMMINS. Yes; but put aside the proof, because I will assume that there is some proof; the railroads could not or certainly would not complain of the rate if it were too high; they would complain of the rate only if it were too low. Suppose we had such a case. In that hearing a comparison between the rate from Dallas and any point in Texas and a rate from Shreveport to any point in Texas would not be admissible at all, would it?

Mr. FINN. To be sure it would.

Senator CUMMINS. That is in the State court, in determining the reasonableness of a rate within the State, it could be set aside because it was too high or too low as compared with a rate from a point outside the State into Texas?

Mr. FINN. I do not know that I exactly catch your question, but if you mean to inquire what character of testimony is permissible before an administrative board in ascertaining the justness and reasonableness of the rate, I will state that both interstate and intrastate rates are permissible for comparative purposes and establish the justness and reasonableness of the rate.

Senator CUMMINS. Well, if the rate was reasonable so far as returning proper interest upon the value of the property, the rate in Texas could not be set aside by a court in Texas reviewing the order of the commission in Texas, because it discriminated in favor of Dallas and against Shreveport, could it?

Mr. PRENTIS. Will you allow me to state that there is a statute in that country providing against discrimination. Our State statute forbids discrimination. I do not suppose there is any difference between the Texas statute and any other.

Senator CUMMINS. That is certain discrimination within the States, but I have never heard within my experience of the adjustment of a rate by a State commission because it discriminated as compared with a rate from outside of the State in.

Senator POINDEXTER. In such a case as you state, the Federal courts would have jurisdiction of the right of citizenship?

Senator CUMMINS. It would be the administration of a State issue just the same in any case. It would not be the administration of the interstate commerce law in such a case as that.

Mr. FINN. Is the object of your inquiry to ascertain whether or not there is a remedy for a shipper if the State commission fixes the rate too high?

Senator CUMMINS. Either too high or too low, on the ground of discrimination.

Mr. FINN. If it is too low, the shipper would not complain. If it is too high, then the shipper has no remedy in a great many States. Neither has he any remedy before a court if the Interstate Commerce Commission has fixed the rate too high, as I understand it.

Senator CUMMINS. Suppose now we have a case in Texas of a rate from Dallas to some other point in Texas, and the rate from Shreveport to that same point is lower so that it gives Shreveport the business and takes it away from Dallas. Could the shipper in Texas—and I am asking for information with respect to the laws—could the shipper in Texas complain to the State commission of Texas that the rate was too high, not because it returned more revenue than was necessary for the railroad but because it enabled Shreveport to get the business instead of Dallas?

Mr. H. H. HAINES. May I be permitted to answer that question? We have that very identical point raised in a case I filed with the Texas commission and which was carried to the supreme court of the State of Texas. That very issue was raised.

Senator CUMMINS. What was the decision?

Mr. HAINES. The decision was that conditions governing the transportation of the traffic and adjustment of rates as a whole must govern and I lost.

The CHAIRMAN. I will state to you gentlemen that it is now the time for the session of the Senate to begin, and I will ask what the pleasure of the committee is as to meeting in the committee room in the Capitol this afternoon?

Mr. THOM. Will the committee be willing to consider that this is one of the very questions which will be given the greatest and fullest consideration under resolution 60 if that resolution is passed by Congress? It lies at the very foundation of the inquiry which, as I understand it, will be made under that resolution and there the whole study of the question can be made, and I should like very much, if this whole subject of transportation which is so fundamentally associated with the transportation of this country, which lies at the very foundation of its capacity for national defense and which is related in such conspicuous and such controlling way to every question now engaging public attention, should be studied together so that a homogeneous system in respect to this matter may be evolved. Every interest could be represented then, every shipping interest, every commercial interest, every railroad interest and every political interest. I have asked for a hearing on this bill and you have been kind enough to accord it to me some day next week. But at the end of it all where do we get? If we make a move on this particular bill we would perhaps be doing by piecemeal a thing that ought to be fixed into a philosophical system.

The CHAIRMAN. I will state that Senate resolution No. 60 passed the Senate some three months ago, and it has been pending in the House and favorably reported by the committee. Under that a joint subcommittee is to be appointed to inquire into all matters of interstate transportation. The consideration of that resolution has been delayed in the House, and, whilst I am told it will be passed, still I have no absolute assurance that it will be, and so when Senator Sheppard insisted that there should be a hearing on this bill I did not feel that under the circumstances I would be justified in delaying it, and I told him the hearing would be held.

I wish to say in that connection that even if Senate resolution No. 60 does pass, the members of that subcommittee, who are now members of this committee and the House committee, will doubtless receive information from these hearings. At all events, it will be a step toward the final solution of the question, even though it is afterwards considered under Senate joint resolution No. 60 by the joint subcommittee. These gentlemen have come here at great inconvenience and I think we ought to hear them, even if all the members of the committee can not attend. Their testimony will be taken down, and doubtless in a case of this much interest the hearings will be read by members of the committee.

So I shall be disposed to proceed with this hearing unless the committee overrules me.

The CHAIRMAN. The committee will now hear Senator Reed.

STATEMENT OF HON. JAMES A. REED, A SENATOR FROM THE STATE OF MISSOURI.

Senator REED. Mr. Chairman, may I claim the right of courtesy to break in at this time with a matter that I want to get to the attention of the committee to be incorporated in these hearings, because I may not be able to come back?

I particularly desire the privilege because I wanted to ask the gentleman who has just been speaking, Mr. Finn, and who has shown clearly that he has studied this question—I want to put the question to him, as well as the committee, to see what he has to say on a particular situation, and in this connection I will read into the record, so that the committee may have it before them, the following telegram [reading]:

ST. LOUIS, MO., *June 29, 1916.*

Senator JAMES A. REED,
Washington, D. C.:

We understand there is a hearing before the Senate committee in Washington to-morrow on bill 5242, introduced by Senator Sheppard, of Texas, seeking to nullify Supreme Court's Shreveport decision. St. Louis, as a city on the borders of the State, suffers extremely from the very condition which that bill seeks to perpetrate. We already have pending before the Interstate Commerce Commission a proceeding

seeking to prevent discrimination against this city, arising of the action of the Illinois Legislature and public utilities commission. As illustrating how we are affected, while it only costs 25 cents to come across the bridge from East St. Louis, the fare from Chicago to East St. Louis is $1.88 less than it is to St. Louis. This, of course, is merely a sample of what happens with respect to passenger traffic. A similar situation exists with respect to freight traffic. We most earnestly protest and ask your aid in preventing the passage of the bill.

THE BUSINESS MENS LEAGUE OF ST. LOUIS,
CLARENCE H. HOWARD, *President.*
GEO. W. SIMMONS, *Chairman Traffic Bureau.*
GEO. J. TANSEY,
Chairman Committee National Legislation.

Senator REED. I have a similar telegram, which reads as follows [reading]:

ST. JOSEPH, MO., *June 29, 1916.*

Hon. JAS. A. REED,
United States Senate, Washington, D. C.

We understand that there is a hearing before the Senate committee to-morrow on bill 5942, introduced by Senator Sheppard, of Texas, and respectfully urge upon your consideration that our people are very much opposed to limiting the powers of the Interstate Commerce Commission and broadening the scope of State regulating bodies in matters of railroad regulation. It is unnecessary for me to call your attention that if this amendment is adopted it will enable State regulating bodies to reduce freight rates on shipments moving entirely within State regardless of interstate rates and will very seriously injure the jobbing interests of Missouri, which perhaps had more jobbers in proportion to her population than any State in the Union. You are no doubt aware that we now have before the Interstate Commerce Commission for decision rates promulgated by the Nebraska State Railway Commission, decision in which case was expected last January, but owing to the gravity thereof the commission apparently has been weighing the situation.

W. J. C. KENYON,
Manager Traffic Bureau Commerce Club.

Senator REED. I read the foregoing telegrams so that my question will be understood. I will add that East St. Louis is in Illinois; St. Louis proper, of course, is in Missouri. They are divided simply by the Mississippi River; and of course Chicago is in the State of Illinois; therefore the State Board of Illinois has jurisdiction to fix rates from Chicago to East St. Louis and does not have jurisdiction to fix rates from Chicago to St. Louis, Mo.

Now, it appears from these telegrams, and I know the fact to be, that the rate for transportation across the river—that is, from East St. Louis to St. Louis proper—only involves an additional charge of 25 cents. Nevertheless, the differences between the rate to St. Louis, Mo., and the rate to East St. Louis, as is stated in this telegram, is $1.88.

Senator CUMMINS. It is $1.88 less to East St. Louis?

Senator REED. $1.88 less to East St. Louis than to St. Louis. Now, it is not worth while to state that, of course, St. Louis is much the better market; there are many advantages there to the shipper because of the very large number of railroads emanating from St. Louis, and that if there was to be a discrimination along economic lines it would naturally be in favor of the large city rather than in favor of the small city.

If this bill is passed, why does it not perpetuate the very conditions now existing and leave in the State Board of Illinois the power to so regulate rates as to greatly injure the city of St. Louis, and how could the wrong be remedied except after somebody had taken a case clear through the courts and established, not that the rate was discriminatory—that could come up in one form of the case and not in the other—but establish that the Illinois rate was an unreasonable rate?

Mr. FINN. May I answer that?

Senator REED. Yes; I made my question in the long form, so as to make it specific.

Mr. FINN. I can answer it in about three minutes, I think, Mr. Chairman.

In the first place the conditions about which Mr. Reed complains exist under the present law as it is now interpreted by reason of the fact that your St. Louis shippers are sleeping on their rights. In the Shreveport case, and in other cases subsequently decided by an appeal to the Interstate Commerce Commission and to the Federal courts, they would no doubt issue an order compelling the railroad company——

Senator REED. The answer is that that power is in the Interstate Commerce Commission now.

Mr. FINN. You will increase the local rates or require the carriers to decrease the interstate rates. That is exactly what we are proposing to prohibit by this bill, for an administrative board to sit as a court of appeal or review over another administrative board which, we will say, in this particular instance is the Public Service Commission of the State of Illinois. Now, when those rates were fixed by the Illinois commission from Chicago to East St. Louis then the carriers had the right to object to those rates on account of the fact that they were unjust and unreasonable.

Senator REED. I do not wish to interrupt you and hope you will not think me discourteous.

Mr. FINN. Not at all.

Senator REED. The railroads did have the right to object?

Mr. FINN. And still have the right.

Senator REED. But the railroads did not object. Now for the purpose of this illustration I will say I am a large manufacturer in the city of St. Louis, shipping a great deal of raw material from Chicago to St. Louis. You are a manufacturer of the same thing in East St. Louis, shipping from the same point. You go to the State Board of Illinois and you get a low rate fixed to your plant. I can not go to the State of Illinois and get the same rate fixed to my plant. I then have recourse, because it is interstate commerce, to the Interstate Commerce Commission, and I say to them that Mr. Finn, under the conditions which I need not repeat, has an advantage over me which is unfair, and thereupon, about the time that the Interstate Commerce Commission is ready to decide whether it is fair or not, Mr. Finn comes into the Senate and gets a bill passed depriving the Interstate Commerce Commission of jurisdiction; and the bill passes. Then what is my recourse? I can go into court and complain that the rate to St. Louis is an unjust rate, but I can not show that it is an unjust rate, unjustly high to me, by showing an unjustly low rate to you, except in so far as the existence of the low rate to East St. Louis might be evidentiary in its character and have some tendency to show that the rate to St. Louis was too high. But could I get a real relief in any way except at the end of three or four years of litigation?

Senator CUMMINS. You have not the right, Senator, to do it. You could not go into a court under the present law and have the court adjust the rate between Chicago and St. Louis.

Senator REED. No.

Senator CUMMINS. There is no jurisdiction of that kind.

Senator REED. No, sir; the jurisdiction has got to be vested in some board somewhere first to fix the rate before you can get into court. That is the point I am trying to make, and Senator Cummins states it more clearly than do I.

Mr. FINN. May I answer your question? You have both answered it.

Senator REED. I did not mean to do so.

Mr. FINN. I do not want to interrupt you gentlemen. I want you to finish asking the question then I want to answer it.

Senator REED. I want you to answer it, and beg your pardon for undertaking to answer it myself.

Mr. FINN. Mr. Chairman, I think our answer ought to be put in also. You have stated the proposition admirably from the carriers' standpoint.

Senator REED. No; from the shippers' standpoint.

Mr. FINN. Well, from the shippers' and the carriers' standpoint, I will put it that way, because the carriers and the shippers agree possibly on those things as they understand them.

Senator REED. No; we have been disagreeing in St. Louis with the shipper for about 30 years, and fighting him in every court in the land.

Mr. FINN. Our position is this: When the railroad companies themselves, who are directly interested in the transportation, and who have shown themselves vigorous on all propositions to prevent any court or commission from establishing an unjust or unreasonable freight rate, when they sleep upon their rights, and refuse to contest a commission-made rate in court, which commission-made rate states that it is just and reasonable and based upon facts which have been brought before that commission, then I say if they do not take an appeal upon that case then it is the lawful rate and should bind everybody as the lawful rate. If they do take an appeal and the courts confirm it, it is still the lawful rate, if they take an appeal and the courts set it aside, then the carriers have the right to make their own rates.

Now, then, here comes along a rate that is absolutely established as the lawful rate from Chicago to East St. Louis. The St. Louis merchants petition for the establishment of a just and reasonable rate from Chicago to St. Louis proper. Then what ought you ask for? What is just and what is reasonable? Why, to go before the Interstate Commerce Commission and say, "Gentlemen, we are entitled to a rate from Chicago to East St. Louis which is the same—I mean to St. Louis—which is equal to the rate from Chicago to East St. Louis, plus the reasonable bridge toll across that river."

Why are you not entitled to it? It is over the same line; it is the same haul; there is not the least possible difference in expense between the intrastate and the interstate transportation. It goes from Chicago to East St. Louis in possibly the same train that the intrastate freight is hauled. Do you mean to tell me that the carriers in any State are going to be so locally patriotic that they would sleep upon their rights and not go to the courts and fight for a just and reasonable rate? I have never seen them sleep upon their rights in any court in the land yet, or before any commission yet, when they believed the local rates had been established, either by State commissions or by the State legislature when they are constitutory and are not unjust or unreasonable.

Senator REED. I think there is much in part of what you are saying, but as to your statement, the latter portion of it, I think the country affords numerous instances, numerous cases, where the railroads have preferred building up a particular locality for their own advantage.

Mr. FINN. Unquestionably.

Senator REED. And therefore they have been quite content to make a rate to that locality extremely low. I think I could furnish you instances where they have hauled for less than cost, at least a great deal less than they have proven is the cost in other cases.

You do not have to furnish instances now; I think that very condition exists in East St. Louis, that the railroads have desired to build a large town on that side of the river. Well, East St. Louis has a right to grow to be a large town, but it does not have the right to grow out of the blood which is drawn from the veins of some other locality.

Mr. FINN. You are right about that.

Senator REED. The other part of your answer is, I think, very worthy of some thought.

Senator CUMMINS. Before we adjourn I want to say to Mr. Finn, and to all those who are on that side of this controversy, that I have given this subject a good deal of study, and there is one thing that perplexes me, and I want to be able, as far as I am concerned, to meet it in any argument which you may hereafter present to the committee.

I do not believe in the enlargement of the jurisdiction of the Interstate Commerce Commission, or of Congress, so that it will absorb the intrastate business. I am entirely opposed to the proposition made in the Republican platform at Chicago, looking to an amendment of the Constitution in that respect. But we have invested the Interstate Commerce Commission with simply unconstitutional authority, and the Supreme Court has held that the authority of the Interstate Commerce Commission to regulate interstate traffic in some instances confers upon it the right to regulate intrastate rates as well, because the latter is so inseparably connected with the former that you can not consider one without also considering the other.

Now your proposal was to take away from the Interstate Commerce Commission a part of its authority to regulate commerce among the States, because the Supreme Court has held that this adjustment of intrastate rates is commerce among the States. Now I do not see any legal way of dividing that authority and conferring a part of it upon the State commissions and a part of it upon the Interstate Commerce Commission. I should like for you, and others to address yourself at some time to that legal situation.

Mr. FINN. I can answer that in about 10 minutes, I believe, Mr. Chairman.

The CHAIRMAN. I think we had better take it up this afternoon.

Mr. FINN. All right.

The CHAIRMAN. We will take a recess until 2 o'clock, and we will also meet at 8 o'clock this evening. The 2 o'clock session will be held

in the office of the Interstate Committee in the Capitol, on the first floor.

(Thereupon, at 11.30 o'clock a. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m., pursuant to the taking of the recess.

The CHAIRMAN. The committee will come to order. You may proceed, Mr. Finn.

STATEMENT OF MR. LAWRENCE B. FINN, CHAIRMAN OF THE KENTUCKY RAILROAD COMMISSION, FRANKFORT, KY.—Resumed.

Mr. FINN. In response to this question of Senator Cummins, I wish to state that the President has said:

> It requires a steady, clear-viewed, thoroughly informed sense to determine what was at any given time the real character of our public institutions. Every law is what those who administer it think it is.

For 25 years the States have been exercising the authority to regulate intrastate rates, without interference or hindrance from the Federal Government. The recent declarations of the Supreme Court of the United States abrogating to the State governments the authority to regulate rates is an innovation and not an established policy of the Government, and might be declared as the present policy of our Government as determined by those who now occupy the Supreme Court bench. All of us have a right to present our views as to the fundamental policy of our Government.

In advocating the amendment to the act to regulate commerce, introduced by Senator Sheppard, we advocate no innovation, but we do insist that the fundamental policies of our Government be changed so that they will conform to the policy of Government, as was established and adhered to by all the departments of Government prior to the Minnesota rate case.

The Supreme Court of the United States has based its determination to take over intrastate rates upon a finding of fact, as a result of an investigation of an administrative board, which is the Interstate Commerce Commission. It does not pretend in any of its opinions on its own initiative to strike down the laws of the States, but it bases its judicial determination upon whether or not an intrastate rate is confiscatory or is just or is reasonable upon an investigation made by another administrative board which in law has no jurisdiction whatever over the findings of fact found by the State administrative board.

This is an anomaly in jurisprudence. The amendment to the act to regulate commerce, which was introduced by Senator Sheppard, brings us back to the old-time fundamentals of government and lays aside the novel condition of affairs as they exist to-day; it denies the right of an administrative board to set aside the findings of fact which have been developed from the proof before another administrative board.

We claim that the Supreme Court of the United States can determine the rights between the parties who are litigants in a rate case just as much to the ultimate justice and satisfaction of the litigants and the public if that determination is reached by an administrative board which represents the State as they can if the administrative board represents the Federal Government, because the same principles of law are applied in the one case as are applied in the other.

The CHAIRMAN. Does that conclude your statement?

Mr. FINN. That is all I have to say in reference to that particular subject.

Mr. THOM. You have used the words "reasonable rate" several times in what you have had to say?

Mr. FINN. Yes, sir.

Mr. THOM. Do I understand that you consider the test of reasonableness to be whether or not it is confiscatory? If it is confiscatory do you regard it as unreasonable, and do you regard it as reasonable if it is not confiscatory?

Mr. FINN. In response to that inquiry I will state that the Sheppard resolution, with a fixed purpose in view, used the word "reasonable." The courts themselves, are the proper tribunals to determine what orders of an administrative board are reasonable, while heretofore it might have been argued, with some degree of plausibility that courts would not disturb the findings of fact of an administrative board unless the order resulted in the confiscation of the carriers' property if it related to freight rates, yet no such contention can be made under the Sheppard amendment, because it uses the word "unreasonable."

Now then what is unreasonable? That leaves it to the judicial discretion of the court that determines the legal significance of the term "reasonable," which I think is altogether proper. You can take in the Wilcox case, where the Supreme Court of the United States held that in fixing the proper rate of return upon a gas corporation, that such a rate of return would have been confiscatory at one time, whereas it would have not been confiscatory or unreasonable at another time, owing to the fact that the changed conditions had actually established the institution as a permanent going concern, and the risk involved in the investment had been eliminated. Therefore, "reasonable" is the proper term to apply, so that in taking into consideration the rate, which was fixed by the administrative board, which in turn establishes the return upon the investment, the court is privileged to review the risk involved, and the risk involved should determine the rate of return, for if the risk is great the rate of the return should be greater; if the risk is absolutely certain, then the rate of return should be less; therefore, as I have previously said, "reasonable" is a proper term to be applied to this particular proposition.

Mr. THOM. Do I understand your statement to be a denial that the term "reasonable" is a correlative of what is nonconfiscatory, and do I then properly interpret your argument that you desire to have reposed in the courts a larger discretion than they now have in making

rates and to confer upon the courts the same discretion that the Interstate Commerce Commission or the State commissions have?

Mr. FINN. I do not. I think the court itself has already modified its original position with reference to its discretion to set aside the orders of administrative boards. I think it is a fair statement that the original opinions of the Supreme Court of the United States limited themselves more in discretionary power than the present-day language of their opinions indicates.

I have just read to this committee the opinion of the Supreme Court of the United States in what is known as the South Covington & Cincinnati Railway Co., plaintiffs in error, *v.* The City of Covington, and the word "unreasonable" was employed in those decisions. While neither were rate cases, yet both concern the practice of an interstate carrier as prescribed by the local administrative board; and I also want to call your attention to this other fact, that this was an ordinance of the city of Covington, and the courts have made a distinction between ordinances, legislative enactments, and orders of an administrative board, that distinction being this: That in case of legislative enactments and ordinances the burden of proof is upon the carrier to show that these ordinances or legislative enactments are void, because they are unreasonable or confiscatory, whereas with reference to the orders of administrative boards the rule is that they must be supported by substantial evidence.

Mr. THOM. Yes, I understand that; but do you understand that the courts exercise any power of upsetting an order of the administrative board unless in the opinion of the court it is a denial of a constitutional right?

Mr. FINN. Why, to be sure not. Do you mean to state, on the contrary, that it is your opinion that the courts should arrogate to themselves legislative functions?

Mr. THOM. I do not understand that the courts will upset the orders of an administrative body unless those orders, in the opinion of the court, amount to a denial of constitutional rights.

Mr. FINN. Do you think that it should be within the province of a court to set aside the order of an administrative board unless that order is not substantiated by substantial evidence? Do you think the courts should go further and substitute their own judgment for the judgment of an administrative body?

Mr. THOM. That is what I understand your bill does.

Mr. FINN. You are mistaken; it does not do that.

Mr. THOM. Therefore I understand it brings us back to the point of refusing all relief, unless it is a denial of a constitutional right.

Mr. FINN. "Unreasonable" is the word that is used. "Unreasonable" is language that is employed by the recent decisions of the Supreme Court. Now then, it has been the contention of the carriers that the only reason that they objected to the State commissions having jurisdiction was because their findings of fact were conclusive. Well, I hope you will state and maintain your proposition throughout this hearing, because if other representatives of carriers come here they will take the position that I have just stated.

Now then, in order that the carriers may be privileged to go before the courts and be guaranteed in every just and reasonable right that they are entitled to, the word "unreasonable" has been used in this act, the act to regulate commerce.

The CHAIRMAN. Is it your understanding that the term "unreasonable" implies something more than confiscatory?

Mr. FINN. I should think so. To be sure, it does.

The CHAIRMAN. Then it would give a power to condemn a rate upon the ground that it is unreasonable, even though it were not confiscatory?

Mr. FINN. When there was no substantial evidence to sustain the rate. You see this; the carriers claim now, if there is any evidence to sustain the rate, that the courts can not set it aside. If there is a scintilla of proof they can not set it aside. This word "unreasonable" adds to the scintilla, the substantial proof that ought to exist to substantiate the judgment of the opinion of the administrative board.

I think, Mr. Chairman, that it is a quibble in fancy, but it is done for the purpose of meeting the fanciful conditions that carriers might imagine would confront them under other considerations. For my part I much prefer the word "unlawful," and in view of recent decisions of the courts believe the word would afford all necessary protection to the carriers.

Now just one other statement or two and then I shall conclude. As an evidence of the fact that this is not a contest between Shreveport and Dallas, I wish to further call attention to the statement made by the Railway Age Gazette as far back as 1910, that the carriers were striving to eliminate the control of the States over their intrastate rates and that the Minnesota rate case, if terminated as Master in Chancery Otis indicated it should be, would accomplish the purpose of the carriers without an amendment to the Federal Constitution.

I also wish to emphasize the fact that the only purpose that the carriers have in eliminating State control is to increase their State rates; to increase on the whole the revenue of the carriers. In the Washington Post, dated New York, May 30, one Mr. Holland writes as follows:

> We want centralized power. Inquiry among those who are in touch with the men of large means discloses that capital would not invest in new railroad securities unless the dangers and embarrassments occasioned by the railroad regulation of 48 States and the Federal Government was so changed as to put the executive power of control in the hands of one central authority, that being the Federal Government.

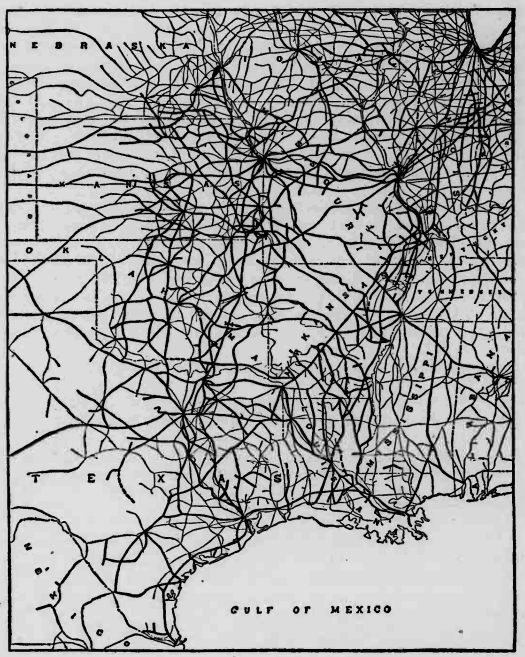
If the control of common carriers is centralized in the Federal Government, it will be an unwise policy, for Mr. Jefferson, who at one time was considered an authority on Governmental policies, said:

> It is not by consolidation or concentration of powers, but by their distribution, that good government is effected: It is by the partition of cares, descending in gradation from general to particular, that the mass of human affairs may be best managed for the good and prosperity of all.

I also call your attention to a statement that our President made, not very long ago, in speaking of the incapacity of the United States Steel Corporation to do justice by itself on account of its huge holdings, and the mammoth business which it attempted to conduct as a unit. Says the President:

> Why, with unlimited capital and innumerable mines and plants in the United States, can not they (the United States Steel Corporation) beat the other fellow in the market? Partly because they are carrying too much; partly because they are unwieldly. Their organization is imperfect. There is a point of bigness where you pass the limit of efficiency and get into the region of clumsiness and unwieldiness.

As an evidence that the elimination of State control of common carriers is but a propaganda of the carriers, I wish to call your attention to page 997 in the Literary Digest for November 6, 1915. This page contains a picture, which I will file with the stenographer, and the advertisement in the Literary Digest is described as the "Land of insolvent railways."



I wish to call your attention to the fact that the Interstate Commerce Commission, in Docket No. 9533, made a report to the Senate of the United States, dated January 20, 1914. On page 195 of that report the carriers advanced cause for the unprofitable operation of property in this territory. This territory embraces the St. Louis & San Francisco Railway Co., the Chicago & Eastern Illinois Railway Co., and most of all their subsidiary corporations. It would seem that if State regulation had been one of the causes for the unprofitable operation of these roads that the officials of the carriers would

have so testified. They give five reasons why these roads have been unprofitably operated, but none of the five embrace State regulation as a contributing cause; whereas the Interstate Commerce Commission found, as a matter of fact, that the chief and real reason was overcapitalization, the item of interest on stocks and bonds issue.

Now, Mr. Chairman, I do not know what is in the minds of these people here. I have tried to give study to this proposition and to come here prepared to answer questions, and if you, or anybody else, will ask me a question I will tell you if I do not know and I will answer you if I do.

The CHAIRMAN. Have you any questions, Senator Brandegee?

Senator BRANDEGEE. I do not think I understood clearly a reference you made this morning to the lack of conflict between the Interstate Commerce Commission and the State commission in determining the rate, on the part of the Interstate Commerce Commission, upon an interstate carrier, and the rate by a State commission upon an intrastate carrier, where the conditions were substantially similar. I am not sure that I have expressed even the question quite correctly, but you will probably recognize what I refer to. If you will repeat that briefly I should like it.

Mr. FINN. I stated that there was no necessity for a conflict between the State jurisdiction and between the Federal jurisdiction; that, as a matter of fact, as conditions now existed, there was a conflict, the conflict having been created since the decision of the Supreme Court of the United States in what is known as the Minnesota Rate case and in the Dallas-Shreveport case, and other cases following the principles enunciated in the cases mentioned. These conflicts exist by virtue of an innovation in jurisprudence, to wit, that an administrative board is privileged by a finding of fact to annul the established lawful rate of a State, fixed by another administrative board. The Sheppard resolution eliminates this innovation in jurisprudence and prescribes that a judicial tribunal shall be the final arbiter of all disputed questions, and that a rate, whether established by the Federal commission or whether established by the State commission, is the lawful rate until set aside by judicial decree, the language of the amendment being:

> That nothing in this act [that is, the Interstate Commerce Commission act], nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or any other carrier from obeying any rate, rule, regulation, or practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage, or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory as aforesaid, unless and until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate, rule, regulation, or practice imposed as aforesaid, to be unreasonable.

The present law, as interpreted by the Supreme Court, gives the Interstate Commerce Commission (not a judicial tribunal, but an administrative board) the right, upon a finding of fact by it, to use this finding of fact as a basis to set aside the lawful rate of a State. We wish the established policy of the Government to still continue in vogue and require the carriers to perform the lawful service prescribed by the proper tribunals of the State until that act of the State has been set aside by the judgment of a court of competent jurisdiction.

Senator BRANDEGEE. Yes; I understand your claim, but would there not be conflict existing even after that resolution was passed?

Mr. FINN. Conflict between the States and the Federal Government is absolutely impossible under the Sheppard amendment.

Senator BRANDEGEE. Would there not be discriminations possible in transportation?

Mr. FINN. If you will keep fixed in your mind what a discrimination is—there can not be a discrimination between intrastate and interstate rates under the Sheppard amendment for this reason: A discrimination between rates can not exist unless as a basis for the discrimination similarity in transportation conditions is alleged and proven. If similarity in transportation conditions is alleged and proven and established, then the fact that the intrastate rate has been established as the just and the reasonable and the lawful rate by judicial decree is conclusive evidence that the interstate rate, which is alleged as being the rate that establishes or creates the discrimination must only be changed to meet the lawful rate as established in the intrastate litigation.

This does not mean that the Interstate Commerce Commission must follow the State commission, because the Supreme Court of the United States is the final arbiter of these questions. We do not want to assume one iota of the authority that the Federal Government has delegated to the Interstate Commerce Commission. You will find the history of the National Association of Railway Commissioners to be that we have advocated practically every amendment to the act to regulate commerce which ultimately made the Interstate Commerce Commission an administrative board with authority worthy of its existence. I have participated in these recommendations, and at various times have held the office of chairman of the executive committee, first vice president, vice president, president of the National Association of Railway Commissioners, chairman of the State Railway Commission of Kentucky for about six years, and aside from those official positions I am otherwise all right, I hope.

Senator BRANDEGEE. I suppose one of the principal objects of the passage of the interstate commerce act was to prevent discriminations between localities and products?

Mr. FINN. I do not think so. Now, I am perfectly willing to admit that there were two existing evils, one just as much of a public detriment as the other, extortionate freight rates and discrimination.

Senator BRANDEGEE. I assumed that the abolition of discriminations was one of the objects of the act.

Mr. FINN. Unquestionably so.

Senator BRANDEGEE. The act stated they made discriminations?

Mr. FINN. Exactly; but it no more made discriminations the paramount purpose than it did unjust and unreasonable freight rates.

Senator BRANDEGEE. That is true. Suppose you have two tribunals determining the reasonableness of the rates and the two, as between an interstate railroad carrier doing business between two points on an interstate basis, and an intrastate railroad carrier doing business between the same two points entirely within a State. The Interstate Commerce Commission fixes one rate and your State railway commission fixes the other. You go to a State court and the State court holds that the rate fixed by the State commission is reasonable, and you go to the United States Supreme Court and they have got the two rates there for the same service between the same points.

It seems to me you conflict all the time.

Mr. FINN. You must understand that the proposed act contemplates the Federal courts having jurisdiction over the very State rate that you presume is to be in litigation. It is of no consequence which case reaches the Supreme Court of the United States first. Both involving the same rate and the same subject matter, the Supreme Court would not confirm an order of the Interstate Commerce Commission fixing a rate and an order of the State commission fixing another rate where the subject matter was identically the same in both.

Senator BRANDEGEE. Under the act you say that the State rates shall not be overruled by the Interstate Commerce Commission unless the State rate has been pronounced unreasonable by a court of competent jurisdiction. Well, a State court would be a court of competent jurisdiction in an intrastate rate, would it not?

Mr. FINN. To be sure it would, but at the same time the carrier would have the right, if it were not satisfied with the decision of the State court, to carry the proposition to the Federal courts. Now, do you not think, as a matter of fairness and justice between the carriers and the shippers, that they are entitled to the benefit of the rate fixed by the lawful authorities of the State until the carriers have had that rate set aside by a court of competent jurisdiction?

You can take the recent act—I think possibly, Mr. Chairman, it was your act—where you provided a penalty for the officials of common carriers who misappropriated the funds of a common carrier. It is provided in the act that if a State court convicts the carrier official that this shall be a bar to a prosecution by the Federal Government.

In other words, there are numerous instances in which there is concurrent jurisdiction over the same subject matter by both the State and the Federal Government; recognized so by Congress, and this fact in itself is not even presumed to cause a conflict between the separate jurisdictions of the State and the Federal Government.

Mr. LUTHER WALTER. Let me put this question to you as a practical matter and see how this amendment would work out.

Mr. FINN. All right, sir.

Mr. WALTER. We will take the situation that existed when the Shreveport case was brought; the rate from Shreveport to Elysian Fields on buggies, for 57.3 miles, was $1.57½ per hundred pounds. Now from Dallas to Elysian Fields, 150 miles, the rate was 56 cents. In other words, for one-third the distance Shreveport paid three times the rate her Texas competitor did. Suppose the Interstate Commerce Commission finds there was an unjust discrimination. Now, then, under the Sheppard bill what would be the first action which would have to be taken by the complainant?

Mr. FINN. The first action would be this: The very fact that the railway companies established the original rate between Dallas and the point that you mentioned would be evidence that they considered that a just and a reasonable rate. Now, that is a matter of violent presumption.

Mr. WALTER. But how are you going to get the courts to pass on that question whether that rate is reasonable or unreasonable?

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Mr. FINN. You do not have to get the court to pass on the question as to whether the rate is reasonable or unreasonable; it is the lawful rate.

Mr. WALTER. This amendment provides:

> Nothing in this act, nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate that the State commission may prescribe.

If it gives that right to the commission, then you must wipe out the discretion.

Mr. FINN. You are mistaken, you do not read the act through. It says this:

> No carrier is absolved from obeying any rate, rule, or regulation unless——

Mr. WALTER. Of the State.

Mr. FINN. Yes, of the State, of course—"unless it is set aside [in substance that] by the judgment of a court of competent jurisdiction because it is unjust or unreasonable." Now, then, just as soon as the Texas Commission establishes that as the rate, then it is the lawful rate until some court is asked by some railway company to take the matter up because it is unreasonable. As long as that is in litigation it is not established, but if it is not in litigation no question is raised about it, it is the legal and the lawful rate, and it ought to be.

Mr. WALTER. Let us get categorical answers as far as we can.

Mr. FINN. All right, as far as we can.

Mr. WALTER. The 56-cent rate was in effect when the complaint was filed, for 165 miles haul in Texas, and there was $1.57½ charged for the 56-mile haul upon the interstate shipment?

Mr. FINN. Yes, sir.

Mr. WALTER. The commission says you must not charge any more, distance considered, on an interstate shipment than you do on a State shipment, but it is provided here that—

> Nothing in this act shall absolve any railroad from obeying any rate of a State commission until a court of competent jurisdiction has held the rate unreasonable.

So that the low rate in Texas, which is the rate complained of, remains in effect until some court sets it aside. Now the carrier is willing to comply with that rate because it dare not attack the rate. How is the shipper going to get any relief under the Sheppard bill?

Mr. FINN. I hope I am not evading the question if I ask you some questions.

Mr. WALTER. I will give a chance later when I come to make my statement. It will help us if you will state your position.

Mr. FINN. I can do it plainly and shall be glad to do it, but I was not attempting to avoid the issue, because I have more than human authority that one way to answer a question is to ask another. But since you object to that I will just answer the questions categorically.

Mr. WALTER. Yes; I wish you would.

Mr. FINN. In the first place when the State railroad commission in Texas fixes a certain rate from Dallas to Ada as a just and reasonable rate, then I state that under the law, as it should be, which is provided for by the amendment of the Senator here, that that should be the lawful rate. Now, then, you speak as if a carrier would be forced to put in that rate.

Mr. WALTER. It is already in; it has been in for years.

Mr. FINN. To be sure. It has been in for years. They have been carrying goods for years. That fact of itself is conclusive that it is the just and reasonable rate for that sort of distance for that length of time.

Mr. WALTER. Yes; but I want relief.

Mr. FINN. You are going to get relief, my dear sir. Now, watch. Here is the relief you ought to get.

The CHAIRMAN. You mean the shippers?

Mr. FINN. The shippers are going to get relief at Shreveport. Now what have you got to do? File your complaint before the Interstate Commerce Commission.

Mr. BARROW. We have done that.

Mr. FINN. All right. And I state then that the carriers from Dallas to this common Texas point have been serving the shippers for years on the lawful rate, confessedly so because they have not even pretended to take it to the courts, and that there is a discrimination between Shreveport and Dallas——

Mr. WALTER. And the commission finds that to be a fact and ordered it to be eliminated.

Mr. FINN. Wait a moment; I am to answer this question, you know.

Mr. WALTER. Just to save time to the committee, is all.

Mr. FINN. Here comes along this complaint. You allege that it is discriminatory. Now, what is your discrimination? There can be no discrimination until you establish, as a matter of fact, such a similarity of transportation conditions that the establishment of either rate conclusively fixes the justness and the reasonableness of the other rate. Then let the Interstate Commerce Commission find, as a matter of fact, that there is a discrimination between Shreveport and Dallas.

Mr. WALTER. It did.

Mr. FINN. Then what does the law say? Here is the reasonable rate; here is your criterion; here is the measure of your just and your reasonable rate, the lawfully established rate from Dallas, Tex., to this point, Ada, which we are complaining about as being a discrimination against Shreveport, La. You gentlemen are only being used as a pack saddle for the carriers to increase their rates in the United States. There is no doubt about that, gentlemen, not a bit in the world, because you can read their own statements. The whole purpose of this proposition is not to eliminate discrimination, but the propaganda started before the Dallas-Shreveport case was ever dreamed of; it was begun in 1909. The Railway Age Gazette shows that it was begun in 1909, and it was not the purpose of the carriers to eliminate the conditions as you say exist in the Dallas-Shreveport case, but it was to wipe out the State as a regulatory authority.

The CHAIRMAN. I do not think we shall permit you time to continue this examination.

Mr. WALTER. I want him to tell me. We have got an order from the commission removing the discrimination, and here is the rate in effect.

The CHAIRMAN. I judge from Mr. Finn's statement that the only relief that could be granted would be to bring the interstate rate down to the State rate, under his view.

Mr. WALTER. Is that what is expected under this amendment?

Mr. FINN. Not necessarily. Suppose it is the interstate's rate established as the lawful rate first, and then the State comes in and says, "There is a discrimination." Then you take that to the final arbiter, which is the Supreme Court of the United States——

Mr. WALTER. The carrier is satisfied with the Texas rate and it is satisfied with what it got in the interstate rate and it declines to go to court to attack any rate. How is the shipper under the Sheppard bill, going to get any relief from the discrimination he is complaining of? I should just like to know as a lawyer, in order to advise my clients.

Mr. FINN. I think I have given it to you.

Mr. WALTER. I confess I have not understood it.

Mr. FINN. Of course language is not plain frequently.

The CHAIRMAN. Mr. Finn, your side was to have an hour and a half longer when you commenced. I dare say you will hardly be able to get through in an hour and a half?

Mr. FINN. I should like for these other gentlemen who are here to make some sort of statement. I will stop right now.

The CHAIRMAN. The committee will next hear Mr. Morgan.

STATEMENT OF MR. J. A. MORGAN, REPRESENTING THE TEXAS COMMISSION, HOUSTON, TEX.

Mr. MORGAN. Mr. Chairman, I will only take a very short time in my discussion of this matter. I simply want to call attention to a few matters along the rate line, and that is all we rate boys want to speak about—the rate question. We do not want to get mixed up with the legal aspects of this case because we do not think we know anything particularly about it.

I have here a map, roughly made, which I desire to call to the attention of the committee. It is a map showing the effect of the original Shreveport order, covering movements from Dallas, Tex., to Shreveport, over the T. & P., and from Houston, Tex., to Shreveport, over the H. E. & W. T. We contend, Mr. Chairman, or it is my contention at least—I do not know that it is the contention of others, as I have not consulted them, that we do not want to abridge the authority of the Interstate Commerce Commission in any particular. I believe every protestant here has as much respect for the decisions of the Interstate Commerce Commission as he has for the decisions of his own State commission. We seriously regard this question of what is the proper way or proper procedure to establish a lawful rate when the State rate comes in conflict with an interstate rate. If you will look at this map, you will notice the line from Harrisburg, Tex., right below Houston, Houston being intermediate to H. E. & W. T. points. The Interstate Commerce Commission, in their original Shreveport order, establish a condition which is now in effect, viz, fourth-section violations, but I want to call your attention to this fact, that if these rates at the time when the Supreme Court passed upon this case and settled it and locked everybody's doors, had been subject to review by some competent body, the condition that is now in existence as to the fourth-section violations from Houston to points on the H. E. & W. T. Railway, would not have existed. In other words, if those rates had been subject to review when the Interstate Commerce Commission made its original order in the Shreveport case we could have

corrected the fourth-section violations which now exist and penalize Houston, Tex.

I want to call your attention to the fact that on cotton piece goods from Houston, Tex., to Cleveland, Tex., via H. E. & W. T. Railway, a distance of 44 miles, the rate is 42 cents; from Harrisburg, Tex., through Houston, Tex., to Cleveland, Tex., via H. E. & W. T. Railway, the rate is 22 cents, Houston being intermediate; and from Galveston, Tex., the rate is 21 cents to the same point. Now, follow that mileage right straight through on this exhibit. Take, for instance, Lufkin, Tex., a distance from Houston of 119 miles, via H. E. & W. T., and take brick. The rate on brick to Lufkin, Tex., is 9 cents.

The CHAIRMAN. From what place?

Mr. MORGAN. Lufkin, Tex. The rate from Harrisburg through Houston, Tex., to Lufkin, via H. E. & W. T., is 5.5, and the rate from Galveston is 6.5. Houston is intermediate to Harrisburg going to Lufkin.

We take the stand that the Interstate Commerce Commission created in the original Shreveport order fourth-section violations without any excuse whatever for creating them. The only lawful reason the Interstate Commerce Commission has for creating a fourth-section violation is because a rate has been established by some other power than that of the Interstate Commerice Commission and over which the Interstate Commerce Commission has no control, and the Interstate Commerce Commission can issue a fourth-section order to take care of a condition of that kind. The Interstate Commerce Commission created this fourth-section violation themselves. They are the fathers of the order, and they made a fourth-section violation from Houston to points on the H. E. & W. T. which are in effect right now and have been in effect since the original Shreveport order and has cost the Houston merchants thousands of dollars. We take the stand that if some tribunal, we do not care whether it is a judge or who it is, but some tribunal had power to review just such an order as this, this condition would not now exist.

We, at Dallas and Houston, are the only two cities in Texas to-day in that large State working under the original order of the commission, and we have been for several years. Harrisburg is practically within the city limits of Houston, and our merchants dray their goods to that place to avoid the original Shreveport order.

I have another exhibit here which has relation to the rates from Waco to Shreveport for the same distance as Houston to Shreveport. Waco is in competition with Houston, and on all these products the rate is lower from Waco to Shreveport than from Houston to Shreveport in every case.

I want to call attention to the fact that we think when a State commission hears the railroad side of a case and hears the shipper's side of a case, when both sides are allowed to come and state their case fully and the State commission after all evidence is submitted should decide a controversy and establish a rate as being reasonable, the Interstate Commerce Commission should not be permitted to set that rate aside if it is an intrastate rate until they have inquired into its reasonableness. That was done not in the Shreveport case nor in the

supplementary Shreveport case. The Interstate Commerce Commission set the rate aside that had been inquired into by the State commission after the railroads and after the shippers had both been heard and the Interstate Commerce Commission set aside the State rate and established a rate that they had not inquired into as to its reasonableness. In order to show you that there is no sanctity to be enshrouded or to be put around an interstate rate, the very rates that were on file with the Interstate Commerce Commission, when this original Shreveport case was heard, were interstate rates. Shreveport attacked those rates which were on file with the Interstate Commerce Commission and had been on file for years. Simply because they were on file with the Interstate Commerce Commission was not a presumption that they were reasonable. The Interstate Commerce Commission, as soon as these rates were attacked after hearing evidence, recognized that they were not reasonable. In the supplementary Shreveport order that was heard at Houston by Commissioner Hall a few months back, the hearing lasted a week. During the last 30 minutes of that hearing the Southern Pacific, through Gentry Waldo, representing the carriers of Texas, filed about 35 or 36 exhibits, which are contained in this book [producing a book], asking the Interstate Commerce Commission to establish the rates covered by the exhibits contained in this book as reasonable rates applied to and from and between all points in Texas, as well as to and from Texas to Shreveport on all of the imported commodities.

We did not have time to contest these exhibits nor examine them. It was two days before Christmas and Judge Hall wanted to come to Washington and visit his home and spend Christmas. We protested. The protest was made at the last minute. We asked Commissioner Hall to give us the privilege of reviewing these commodity rates before he passed on them. He told us to file an application with the commission as a whole and said they would consider it. We filed that application with the commission as a whole. We had our lawyer draw it up in legal form and send it to the Interstate Commerce Commission, and not hearing from the Interstate Commerce Commission in about 15 days I wired Commissioner Hall and asked him what action had been taken on our application to allow the shippers of Texas to review these commodity rates filed in the last 30 minutes of the Houston hearing. He wired back, "Your application has been refused."

Now, the commission is sitting as a tribunal assuming jurisdiction over Texas intrastate rates as applying to and from between Texas points, and those commodity rates are before them, and they are to say whether those commodity rates are reasonable or unreasonable when we have not had the opportunity to protest their unreasonableness.

I was employed in the Texas State commission last year as expert rate clerk for a specific purpose, and that specific purpose was to see now many interstate rates conflicted with intrastate proposed rates in the State hearings. I found hundreds of cases where the intrastate rate asked for by carriers in their application for additional revenue were higher mile for mile than the interstate rate then in effect. For example, the carriers asked for a 24-cent rate on grain from North Texas to Galveston while they were then carrying a 22-cent rate from Oklahoma points to Galveston.

The Texas commission could not consistently grant carriers a higher intrastate rate from a north Texas-Oklahoma border point to Galveston than the rate from an Oklahoma point to Galveston that would have created a fourth-section violation if they had done so.

In the Shreveport case Commissioner Hall would not allow us to use any inbound rates. I prepared myself 19 exhibits on inbound rates, comparing the inbound rates, say from St. Louis to Shreveport, and from St. Louis to Texas points as against an inbound rate from St. Louis to Houston points, and I will give you one example so that you will understand it. The rate from St. Louis to Shreveport on canned goods is 33 cents. The rate from Shreveport to Texas common-point territory is 30 cents, making a through rate of 63 cents, St. Louis via Shreveport to Texas common points.

The rate from St. Louis to common points is 53 on canned goods and Shreveport could get all over Texas common-point territory at a maximum rate of 63 cents while Houston or Dallas, Tex., could only get 40 miles away from their respective territories until they met the Shreveport maximum of 63 cents. In other words, Shreveport could reach the entire Texas common-point territory at an in and out bound rate of 63 cents while Houston or Dallas could only go 40 miles distant on Texas common-point territory.

Judge Hall said in his opinion that he could not consider inbound rates in the Shreveport case; therefore this Texas State case, as submitted to the interstate commission at Houston would be misleading, if they considered it at all, because inbound rates are a factor there in the adjustment of State rates, a great factor.

Mr. WALTER. You mean the State commission makes a rate taking into consideration what the inbound interstate rate is as well as the outbound?

Mr. MORGAN. I mean this, just what I have said, that the Texas commission said this to me when I went down there to check interstate rates in the State hearings that if the railroad companies asked for a rate on corn intrastate from a point in northern Texas down to Galveston, a distance of 450 miles, of 24 cents, and if the interstate rate on corn for that distance of 450 miles toward and into Texas was 22 cents, the Texas commission wanted this information in order to intelligently consider the carriers' application for increased intrastate rates—in other words, the commission of Texas did not want to establish a higher State rate than the carrier was carrying interstate to Texas points, mile for mile being considered. In my analysis of the interstate condition I expect I found as many as a thousand instances where the interstate rates into Texas were lower than the intrastate rate applied for by carriers mile for mile.

Such a condition as that, in my judgment, makes it necessary for a State rate to be reviewed before displacing it. I repeat, that I do not know whether such rates should be reviewed by a court of competent authority, but I insist State rates should be reviewed by some competent body or the Interstate Commerce Commission before they are removed by the Interstate Commerce Commission and when such rates are reviewed and their reasonableness passed upon then all of these troubles will vanish as mist before the sun; there is no question about it. You will not have those troubles if this is done, but so long

as State rates which have been passed upon as reasonable by a State commission are set aside without their reasonableness being passed upon, we will have the trouble that we have had in the original and supplemental cases. We do not ask you to diminish the authority of the Interstate Commerce Commission. We do not think that the sanctity of an interstate rate which has not been reviewed is any greater than that of a State rate which has been reviewed.

The CHAIRMAN. By whom would you have that reviewed?

Mr. MORGAN. Well, I have given that matter considerable thought. At the present time if you found that your committee could not agree on a court of competent jurisdiction to pass upon such matters it would relieve the condition a whole lot if you would require the Interstate Commerce Commission to pass upon the reasonableness of a State rate that had been passed upon by the State as reasonable. That is the same as a lower court passing upon a case and a higher court affirming it, or the higher court reversing it as the facts might warrant.

Mr. WALTER. Is that not just what the Interstate Commerce Commission did in the Shreveport case?

Mr. MORGAN. They did not.

Mr. WALTER. They certainly did.

Mr. MORGAN. They did not. They put in those commodity rates without any hearing in the original Shreveport case, via H. E. & W. T. Railway and they are there to-day, and I defy you to say they put in those commodity rates after a hearing and I defy you to say that there was any evidence at the original hearing on the reasonableness of the commodity rates which are now in effect from Houston toward Shreveport via H. E. & W. T. Railway. The Supreme Court said that the State rate should not be used as an interstate rate. In the original hearing Justice Hughes said that as long as the interstate rate had been filed with the commission and the Interstate Commerce Commission had accepted that as a reasonable rate, the carriers had the right to file the interstate rate as being reasonable, and those rates were filed and are still in effect from Houston over the H. E. & W. T. Railway, and the Interstate Commerce Commission has not to this day passed upon their reasonableness and Houston and Dallas are being penalized thousands of dollars by reason of this order while competing towns at our very door are enjoying lower rates because the Interstate Commerce Commission did not include those neighboring cities in the original Shreveport order.

I think in this argument we have almost entirely lost sight of just what this hearing is for. There was not a traffic man in Texas who objected to a reasonable rate being made between Shreveport and Texas points. We all got on the witness stand and said we thought there ought to be reasonable rates on the mileage basis, and that those rates should be somewhat similar to the Texas State rate. What we did object to, and what we filed in the record there with Commissioner Hall at the Houston hearing was our claim that the Interstate Commission had no right to make rates to, from and between all points in Texas, regardless of the commodity, regardless of where it moved, to cure the Shreveport discrimination. We say that yet. We say that, and a shipment of household goods, moving from Houston to Hempstead, Tex., Hempstead being northwest of Houston, we say that the Interstate Commerce Commission

can not fix a rate on that shipment of household goods, because it does not discriminate against Shreveport.

When Mr. Walter made his argument before the commission in this case Mr. Clements asked him the question as follows:

> Mr. Walter, do you mean to say to me that you want this commission to fix rates to, from, and between all points in Texas to cure that Shreveport discrimination?

Mr. Walter said, "I do." Mr. Clements said, "Mr. Walter, I do not think this commission has that authority," and Mr. Walter then went on to argue that question and said they did have the authority and that if the State rates interfered and if it was necessary in order to remove a discrimination to make rates to, from, and between all points in Texas it was the duty of this commission to do it, and the State rates must fall in preference to the interstate rates. That was the substance of Mr. Walter's remark to the commission.

I asked Mr. Atkins, when he was on the stand at Houston [reading]:

> Mr. Atkins, do you mean to state here and now in this complaint that you want the Interstate Commerce Commission to make rates from a point in west Texas, say, Laredo to Amarillo, on a shipment moving in that direction, both in the extreme western part of Texas.

To this question he answered, "I do."

Here is the question. There is only one question involved here. We admit that the Interstate Commerce Commission has the right to make rates from Texas points to Shreveport; we admit they have the right to make those rates to cure discrimination. We do not admit that the Interstate Commerce Commission has a right to make a rate through from Laredo to Amarillo to cure that discrimination.

Mr. WALTER. Let me ask you a question right there. Let us say that the Amarillo man is buying onions and distributing them in the territory west of Amarillo. Shreveport is buying onions and distributing them to the territory west of Shreveport. Now, are not the rates on onions to Laredo, Tex., to both lines, and Shreveport east, certainly adjusted on a reasonable mileage basis?

Mr. MORGAN. Onions, yes; I will say yes. But you might say onions and you might say watermelons, and you might say cabbage, and other produce, but when you get outside of that you get out of all of it practically. And I say this to you, Mr. Chairman and members of the committee, the Interstate Commerce Commission every day in the year makes a rate on a commodity from one State into another State, but they do not in making that rate say that your interstate rate between this point of origin in this State, mile for mile, must be on a parity with this rate we are making interstate.

Now, the application is the same, only it is broader here. It is absolutely the same thing. The Interstate Commerce Commission does not say in any of those cases that your intrastate rate, mile for mile, must be the same on a shipment of dry goods that they are establishing interstate. That is what they are asking for in the Shreveport case.

Mr. Chairman and members of the committee, in my argument before the Interstate Railway Commission in Washington, reviewing the Shreveport application, I pointed out to the commission that the intrastate rates in Oklahoma moving south toward Texas, mile for mile, were less than the interstate rates moving south mile for mile into Texas; I also called the commission's attention to the fact that

the intrastate rates from Louisiana through the Orange gateway and from Arkansas points through the Texarkana gateway were less, mile for mile, than the interstate rates applying from those States into Texas. I want to call your attention particularly to a specific case—the town of Hope, Ark., with about 10,000 inhabitants, having wholesale grocery houses, cotton compress, cottonseed-oil mills, etc.: The distance from Hope, Ark., to Texarkana, Tex., is 33 miles. A shipment of dry goods moving from Hope, Ark., to a point 10 miles across the line into Texas, the present rate is $1.24 per 100 pounds. For a similar distance, viz, 43 miles from Shreveport to a point 10 miles in Texas, Shreveport is asking the Interstate Commerce Commission to establish a rate on a similar shipment of dry goods of 35 cents per 100 pounds. The point I wish to impress upon your committee is, if the Interstate Commerce Commission in fixing a just and reasonable rate from Shreveport to points in Texas should find it necessary in order to eliminate discriminations to put in a set of rates to apply to, from, and between all points in Texas, as well as to, from, and between all points in Texas to Shreveport, a greater discrimination would be created in favor of Shreveport and against all other jobbing centers within the States of Louisiana, Arkansas, and Oklahoma; and should such an order be issued by the Interstate Commerce Commission, in less than 30 days there would be such a great number of similar complaints filed with the Interstate Commerce Commission as to put that body five years behind in its work and greatly reduce its efficiency. In fact, Texas, through its organized commercial traffic associations, will, if the Interstate Commerce Commission assumes to establish and make rates to, from, and between all points in Texas intrastate to cure an alleged Shreveport discrimination, immediately file similar complaints with the Interstate Commerce Commission against discriminatory interstate rates applying to and from points in Arkansas, Oklahoma, and Louisiana.

One example will suffice to inform this committee of discriminations that exist at the present time on interstate traffic as compared with intrastate traffic between points in Louisiana and from Louisiana points to points in Texas: Lake Charles, La., is 220 miles from New Orleans and 40 miles from Orange, Tex. A rate was established on first-class freight from Orange, Tex., to Lake Charles, La., of 35 cents. Immediately the Louisiana State commission established a first-class rate of 35 cents from New Orleans to Lake Charles. This question of building a wall around Texas with a view of eliminating outside competition is exemplified by the Louisiana State commission establishing a 35-cent first-class rate from New Orleans, La., to Lake Charles, La., a distance of 220 miles, to meet a competing interstate rate of 35 cents, Orange, Tex., to Lake Charles, a distance of 40 miles. It would therefore appear that the State of Louisiana has filed a complaint against the State of Texas, alleging that the Railway Commission of the State of Texas has fixed intrastate rates in such a manner as to practically eliminate interstate competition when the Lake Charles-Orange-New Orleans situation just mentioned fully bears out a statement that can not be successfully contradicted—that the State of Louisiana is maintaining the same barrier against interstate competition as she complains of against the Texas situation. In a conversation which I recently had with a prominent interstate examiner, discussing the Shreveport case, this examiner said

to me that in studying the rate adjustments as applying between Texas and Louisiana he found that Texas was discriminated against in favor of Louisiana in 10 instances, while Louisiana was discriminated against in favor of Texas in 1 instance.

Mr. Walter has called your committee's attention to what he would lead you to believe is a serious discrimination against Shreveport in favor of Texas jobbers in the movement of peanuts, he stating that 1,400 cars of peanuts were raised in Texas last year, and Shreveport could not enter the Texas market on account of the excessive interstate freight rates. Shreveport has a large peanut factory; it is a member, if you could so construe it, of the Peanut Trust, the factory in Shreveport being a branch house of the parent company.

Now Mr. Walter would have this committee believe that the condition that he has stated actually exists in regard to Shreveport being eliminated from the Texas market. His statement is misleading. For the information of your committee I desire to state that peanuts move through Shreveport and through Texas cities on a shelling-in-transit arrangement. For example: A carload of peanuts originating at Hempstead, Tex., destined to St. Louis, to be shelled in transit at either Shreveport or Dallas, the rate from Hemsptead to St. Louis via either Dallas or Shreveport is the same; therefore no discrimination could exist. Furthermore, 98 per cent of the peanuts moving into Shreveport are handled on a milling-in-transit basis. Not more than 2 per cent are consumed locally in Shreveport. Therefore, if a discrimination did exist it would be of such a minor nature as to be practically negligible.

In the Shreveport complaint, which was heard at Houston, Tex., by Commissioner Hall in December, 1915, I prepared 19 exhibits in defense of the Texas rate situation. More than half of these exhibits dealt with a comparative in and out bound rate, say, St. Louis to Shreveport and Shreveport to a point in Texas, as compared with a movement of the same commodity from St. Louis to Houston and Houston to a point in Texas. Take, for an example, canned goods: The rate on canned goods, in car lots, from St. Louis to Shreveport is 33 cents, and from Shreveport to all points in Texas common-point territory, which covers an area of 500 miles east and west by 700 miles north and south, is 30 cents, making a through rate on canned goods from St. Louis, stopped at Shreveport and distributed from Shreveport to Texas common-point territory, of 33 cents, while the rate from St. Louis to Houston, Tex., on canned goods is 53 cents; and Houston can only get 40 miles out from that city until they reach a rate of 10 cents, which makes a total rate, in and out, of 63 cents, which is the in and out Shreveport rate. In other words, Shreveport on an in and out bound rate on canned goods originating at St. Louis can reach the entire common-point territory of the State of Texas on a 63-cent rate, while Houston, Dallas, Fort Worth, and other cities can only go 40 miles distant from their towns until this 63-cent rate is reached, giving Shreveport an undue and decided advantage in jobbing their goods to Texas consumers.

Mr. Chairman, as the hour is growing late, I will not take up further time in discussing this question. I thank you.

The CHAIRMAN. Mr. Byars, the committee will hear you.

STATEMENT OF MR. ED BYARS, REPRESENTING THE FORT WORTH BUREAU, FORT WORTH, TEX.

Mr. BYARS. Mr. Chairman, I see that the Hon. Earl B. Mayfield, of our State railroad commission, is here, and as I am very anxious that he should be heard by the committee I will make my statement as brief as possible.

In discussing this bill it will not be necessary for me to review in detail all the incidents in the Shreveport case leading up to the present time. Suffice it to say that the Interstate Commerce Commission set aside the Texas commission's rates when it ordered in a scale of class rates from Dallas to points in east Texas on the Texas & Pacific and from Houston to points in Texas northeast thereof on the H., E. & W. T. However, the scale there fixed as far as it went, which was 182 miles on the T. & P. and 230 miles on the H., E. & W. T., was the same as the Texas commission's scale, the only difference being that the western classification was ordered to be used in connection with it instead of the Texas commission's classifications. The western classification contains a majority of higher ratings but it also contains some lower ratings than the Texas classification. Three out of the seven members of the commission dissented from the opinion on the apparent ground that they did not have the authority to make State rates in view of section 1 of the act to regulate commerce, which specifically provides that they did not have such authority. What did the Supreme Court do when this case was appealed to it? It examined the law and came to the conclusion that the Interstate Commerce Commission has the power to make State rates wherever such action becomes necessary to preserve the freest flow of commerce among the States.

Of course, the Supreme Court's interpretation is the law of the land, and stands as such until the Congress speaks again and leaves no such question open to interpretation but specifically provides that under no circumstances shall State-made rates be set aside unless and until they have been carefully examined into as to their reasonableness and found to be unreasonable by a court of competent jurisdiction. In the Shreveport case the reasonableness or the unreasonableness of the Texas rates per se was not examined into at all. The particular rates under examination have been the rates from Shreveport into east Texas points and from east Texas points into Shreveport, La. Those are the only rates the Interstate Commerce Commission ought to have the right to fix, because they are interstate and because that was the purpose of the act to regulate commerce.

We believe that the State should have the right to make rates and to regulate railroads in the matter of transportation charges just as much so as to regulate them in the matter of the issuance of stocks and bonds or requiring them to make track connections or any other orders affecting their revenues whatsoever. Secondly, the Interstate Commerce Commission, at the present time, is wholly unprepared to take over the work of making rates on the intrastate traffic of all the separate States.

The State of Texas has next to the longest State line of any State in the Union. Its intercoastal canal and two navigable rivers—the navigation of each of which is being extended—its vastly differing soil and climatic conditions, crop productions, etc., its mountainous section, its marshy rice lands; and all of those things must be considered in connection with its transportation conditions.

The railroads at the Shreveport hearing, in the supplemental order, seemed to suggest taking the level of the rates from Shreveport into Texas, which are admittedly very high, and the Texas commission scale, which the carriers claim is too low, and striking a level halfway between the high and low points and making that level the basis for both the Texas intrastate rate and the interstate rates from Shreveport; in other words, grade the Texas rate up and grade the Shreveport-to-Texas rate down. That is a most unjustifiable proposition, because it is presupposing that the Shreveport rates are somewhat near reasonable rates and that the Texas rates are too low. The Shreveport people, in my judgment, ask for rates from Shreveport into Texas on traffic that never moves and never has moved and never will move from Shreveport into Texas, and it seems to me it is a proposition as to which the Shreveport people are being somewhat misled.

I would like to read from the brief filed by the Fort Worth Freight Bureau in Docket 3918 just an extract from page 25 [reading]:

> The complainants' principal object in bringing this case was to get into Texas with their goods, the greater portion of which are received on low inbound carload rates (which great advantage they expect to retain), and some very few of which goods are manufactured at Shreveport. But it so happens that they do not manufacture brick in Louisiana to any very great extent, and practically none at Shreveport. Therefore, any rates that might be prescribed from Shreveport to Texas points on this commodity would be merely paper rates, and we do not think that this commission will feel justified in going to the extreme lengths of increasing the Texas rates in order to establish a scale of rates for the benefit of Shreveport's brick manufacturers of the future.
>
> There are probably three or four brick plants in the State of Louisiana, making only the low grade common brick; they have not the clay from which to make any other kind of brick, and very little of that. Therefore no necessity exists for any rates from Shreveport to Texas.
>
> It is approximately 1,000 miles, roughly speaking, across the State of Texas from Brownsville to Texline; there are 125 brick plants in this State—one for every 12½ miles. From Texarkana to El Paso it is 850 miles, or one brick plant for every 7 miles.
>
> The last available Government Statistical Report (1913) shows that Texas produces practically three times as many brick as Louisiana, and that no face, front, fire, or paving brick are manufactured in Louisiana.
>
> Under the circumstances, certainly no necessity exists for this commission, in prescribing reasonable rates to and from Shreveport, to disturb the present rates in Texas.

I would like also to read an extract from an address made by Judge William D. Williams, of the Railroad Commission of Texas, at Austin, on June 13, referring to the Sheppard amendment. Judge Williams said:

> Because of its great size and the large volume of purely State transportation in Texas, the shippers and citizens of this State are probably more seriously threatened than those of any other State, by the startling innovation inaugurated under authority of what is known as the Shreveport rate case; and yet while this is true the extent to which that case goes is generally overestimated and its effect misconceived. Indeed, I might say that if it had a greater effect, while it might substantially destroy the autonomy of the States, it would likely be less dangerous both to State and interstate shippers. For the decision of the Supreme Court of the United States divides the control of State rates between two bodies, the one State and the other National, and these two bodies, each with its incomplete control, have no means of acting together. It is not correct to say that the Interstate Commerce Commission makes rates in Texas. The Supreme Court of the United States expressly holds that it has no such power. What the commission does when it interferes is to annul rates made by the State commission and authorize the railroads to substitute therefor rates that are higher and that

may be as high as the railroads desire to make them. It says, in effect, that the rates from Shreveport into Texas are greater than the rates between Texas stations for the same distances on the same commodities; we order that these differences be corrected, and we find that certain rates from Shreveport into Texas are reasonable, and these rates must not be increased. Now, under this order, the Supreme Court holds that the railroads may remove the discrimination which has been found to exist against Shreveport by increasing the Texas rates. This leaves to the railroads the following options: They may reduce all rates to or even below the Texas level; they may reduce the Shreveport rate part way and increase the Texas rate up to the same point; or they may increase the Texas rate to or above the Shreveport rate and let the Shreveport rate stand as it is. Obviously so large a discretion will be used by the railroads to their own advantage as far as they dare go.

Instances of this are already in existence. When the railroads put in their tariffs on the Texas & Pacific Railway from Dallas east to the State line, and on the Houston, East & West Texas Railway from Houston northeast to the same line, they carefully raised all the Texas rates until they were as high as the rates from Shreveport into Texas; but there were certain other rates which from before the beginning of the case were higher in Texas than the rates from Shreveport into the State on the same commodities. The roads made no change in these tariffs, and the Interstate Commerce Commission had no power to and did not attempt to compel them to do so. The result is an equalization of rates per ton mile so far as Shreveport is concerned, but the retention of discriminations against Dallas and Houston and other Texas jobbing points.

DISCRIMINATION AGAINST TEXAS.

Discriminations have also resulted against Texas cities in the matter of minimum weights for carloads. Where these minimum weights were lower in Texas than on like commodities moving from Shreveport into the State, they have been raised to the same figure, but where they were already higher than the interstate minimums they have not been reduced but remain higher to this day.

Nor is this all. Upon a supplemental application, the Interstate Commerce Commission by its order attempted to enforce equality of rates over all of what it calls east Texas, which includes the Santa Fe Railroad to the Brazos River and down the river to its mouth and everything to the east and north. A further application is now pending and may be decided any day which asks the extension of this equalization westward to the Rio Grande River and its application throughout all Texas.

Shreveport never was and so far as a human being can tell never will be in competition for business in ninety-nine one-hundredths of this vast territory over which it seeks to control the rates. There are large numbers of comparatively well-informed merchants in many places in Texas who, except for the notoriety given it by this case, would have never heard of Shreveport and would have lived and died ignorant of its existence, but prosperous and happy notwithstanding their ignorance.

Shreveport is not a factor in Texas business, and yet grave consideration is being given by the Interstate Commerce Commission to the claim which it makes of a legal right to control that business and to shape its destinies. It desires to say which of our industries may live and which shall die. It seeks the power to destroy commercial centers within our borders and to build up others in their stead.

Shreveport is not in a grain-producing territory, neither is it a center for the handling of that commodity. If it ships any grain into Texas during the year, it is probably not in carload lots and it is certainly not in larger quantities. The carload rate from Shreveport to Big Sandy, a distance of 89 miles, is 15 cents, and the carload rate for an equal distance in Texas is 11½ cents. There is a very large carload movement in Texas. There is comparatively, and probably literally, no carload movement from Shreveport into Texas, yet Shreveport would claim, and was in a fair way to secure the right in the eastern Texas district, to increase the Texas rate 35 per cent in order to save from discrimination a commerce which did not exist. The Shreveport carload rate on flour to Big Springs, some 489 miles, is 30 cents, while the rate in Texas for the same distance on the same commodity is 20 cents. If this effort succeeds, the Texas rate is to be raised by 50 per cent, and again this is done for the purpose of protecting a commerce which does not exist and which can not be produced until climatic and soil conditions are entirely changed throughout the affected territory.

It is not possible to give all the instances in detail, and it must be enough to say that I have not been able to find an exception where the result aimed at would not increase the Texas rate on grain and grain products by from 35 to 200 per cent.

Shreveport ships practically no live stock into Texas, but it has a rate per car to Waskom of $16.50, while the rate per car on live stock in Texas for the same distance is $11. The Shreveport rate to Hawkins, 94 miles, is $25.30, while the Texas rate for the same distance is $18. The Shreveport rate to Terrell, 158 miles, is $33 per car, while the Texas rate for the same distance is $22. The Shreveport rate to Dallas is $35.75 per car, while the corresponding Texas rate is $24. The Shreveport rate to Fort Worth is $33.50 per car, and the Texas rate for the same distance is $26. These are fair instances, for here again the rule is universal that the Shreveport rate is higher than the Texas rate. As I have said heretofore, Shreveport does practically no business in live stock either with Texas or with any other place. In Texas the raising of live stock is a vast industry with an investment of many millions of dollars, and upon it depends the fortunes and even the lives of tens of thousands of our people. An increase of the Texas rate such as would be necessary to equalize it with the rate from Shreveport would reflect a greater injury to the stock raisers of Texas than a year absolutely without rainfall, and yet the Interstate Commerce Commission, even if it decides this claim against Shreveport gives months and months to its consideration. With all seriousness, it considers propositions which would destroy our producers and would substitute for it something which can do Shreveport itself no good whatever, except as it might rise upon the ruins which it has created across the border and throughout this State.

The rates on crude petroleum if it were raised to equal the Shreveport demand would be increased from the present Texas rate by anywhere from 33 to 100 per cent. The rates on sand and gravel would be doubled for the short distance for which such rates are applicable interstate. The rates on brick would be increased anywhere from 30 to 120 per cent.

The rate on coal from Dallas to Forney, 20 miles, has been increased from 55 cents per ton on a minimum carload of 20 tons, to $2.50 per ton on a minimum of 24 tons. If this sort of rate is put in force all over Texas or over the eastern district, our coal mines will close down in short order.

And even this going on through an almost interminable list is not all.

Mr. BYARS. In another part of the speech he says that the Texas rates are always more than compensatory and that the railroads are seeking, through the Shreveport decision, to throw off the control on regulation by the State commission and make rates as they please [reading]:

TEXAS PAYS TOO MUCH.

The average freight rate already paid in Texas on strictly State business was 12.92 mills per ton-mile for 1914 and 1915, while the average rate on interstate business in Texas was 8.34 mills per ton-mile for the same period. In plain English this means that Texas business is now and in the past has been paying, on the average, 55 per cent more freight for the same service when done altogether in Texas than was charged if the shipment crossed the border line. Yet the Shreveport interstate rate into Texas is much larger than the Texas rate itself. And this again means that other interstate rates are far less than those from Shreveport.

Now, if Texas freight rates must be based upon interstate rates, why not give us the benefit of the low rates? Why force us to take as a basis the highest rates which can be found? Even the Texas railroads themselves, when they applied to the Texas commission for increased revenues, asked no such increases as they are authorized to make by eastern Texas order of the Interstate Commerce Commission.

Examine the New Orleans rates into Texas for a moment and compare them with those from Shreveport. Agricultural implements from Shreveport pay 4.09 mills per ton-mile average to Texas points west of Marshall. From New Orleans they pay 2.4 mills per ton over the same rails, passing through Shreveport on the way to the same destinations. The Shreveport rate is 66 per cent the higher. Bagging and ties from Shreveport, 1.8 mills per ton-mile. From New Orleans, 1.1 mills per ton-mile. Difference in favor of New Orleans of about 70 per cent. Print paper from Shreveport, 3.6 mills per ton-mile. From New Orleans, 1.8 mills—exactly 50 per cent of the Shreveport rate.

Why not let Texas have the New Orleans rate? Why compel it to take the highest interstate rates found across its borders?

The Interstate Commerce Commission has refused to raise interstate rates for the purpose of increasing railroad revenues. In all courtesy, I ask them to consider well if, having acted thus, it is fair and just to increase those same revenues by forcing increases of State rates.

The fact is that the order of the Interstate Commerce Commission, when applied, produced monstrous and absurd rate situations within Texas, and the Interstate Commerce Commission, misconceiving, as I believe, its powers and duties, is undertaking

to correct these situations which are matters affecting State commerce alone. Under the decision of the Supreme Court the interstate tribunal may destroy Texas rates, but it can not replace them. The State commission alone can repair the damage done to State commerce by the interstate body.

Mr. BYARS. I have a pamphlet here, printed by the Railroad Commission of Texas, which gives a synopsis of the Shreveport case in very lucid terms. It contains the argument of the Hon. Sam H. Cowan of counsel employed by the Texas interests, and I would like to file it for the information of the committee.

The CHAIRMAN. Would you like to have that printed in the hearing?

Mr. BYARS. Yes, sir; it might be very instructive.

Senator SHEPPARD. I had intended to present that myself, and I am very glad to have Mr. Byars do it.

The CHAIRMAN. It will be incorporated in the record.

(The pamphlet referred to is here printed in full, as follows:)

THE SHREVEPORT CASE.

Before the Interstate Commerce Commission. Docket Nos. 3918, 8290, and 8418.

Railroad Commission of Louisiana, Complainant *v.* St. Louis Southwestern Railway Co. et al., defendants.

The supreme importance of the questions involved and the ultimate result which might follow a decision of the Interstate Commerce Commission and the courts to practically abolish the Railroad Commission of the State of Texas, and the inestimable injury to the State of Texas which might follow the final adverse decision in the case, leads me, as one feeling a great interest in the subject matter, to submit for the information and consideration of the public such matters of law and fact as to warn the public of its danger.

The fact that there has been no manifestation of public interest in this case would seem somewhat strange and could be accounted for mainly, no doubt, because of the lack of definite information with respect to the results which possibly may follow, and the fact that the final results have not yet come.

Considering the great controversy arising from the appointment of the Railroad Commission of Texas, and to that end, of the amendment of the constitution in order to regulate the rates, rules, and regulations and practices of the railroads and transportation within the State, it is still more remarkable that when the public is confronted with the proposition that the Interstate Commerce Commission may abolish the constitution, statutes and acts of the Railroad Commission of Texas, comparatively little heed has been paid to it.

On March 11, 1912, the first of these cases was decided by the Interstate Commerce Commission, opinion by Commissioner Lane, reported in 23 I. C. C., 31. The essential matters in controversy are thus stated by Commissioner Lane (p. 33):

"This proceeding places in issue the right of interstate carriers to discriminate in favor of State traffic and against interstate traffic. The gravamen of the complaint is that the carriers defendant make rates out of Dallas and other Texas points into eastern Texas which are much lower than those which they extend into Texas from Shreveport, La. A rate of 60 cents carries first-class traffic to the eastward from Dallas a distance of 160 miles, while the same rate of 60 cents will carry the same class of traffic but 55 miles into Texas from Shreveport. For further illustration of the rate situation, reference is made to the appendix of this report.

"The railroad Commission of Louisiana has brought this proceeding under direction of the legislature of that State for two purposes: (1) To secure an adjustment of rates that will be just and reasonable from Shreveport into Texas; and (2) to end, if possible, the alleged unjust discrimination practiced by these interstate railroads in favor of Texas State traffic and against similar traffic between Louisiana and Texas.

"The railroads deny that the rates out of Shreveport are unreasonable, but place their defense mainly upon the proposition that they are compelled by the Railroad Commission of Texas to effect the discrimination here involved."

The commission, after elaborate reasoning with respect to the powers conferred upon it by the act to regulate commerce, held in its final conclusion, that the existing class rates out of Shreveport to Texas on the Texas & Pacific Railway and on the Houston, East & West Texas Railway, were unjust and unreasonable, and fixed a

scale of class rates to be applied up to a distance of 182 miles on the Texas & Pacific Railway and 230 miles on the Houston East & West Texas Railway.

It was held that the maintaining of the higher rates to and from Shreveport and points in Texas than are maintained from cities in Texas to such points, constituted an undue preference and advantage to the Texas cities, and a discrimination that is undue and unlawful against Shreveport; hence that the order should be issued directing the carriers to maintain rates no higher than the scale prescribed as between the points named, and that the Texas & Pacific Railway Co. and the Houston East & West Texas Railway Co. cease and desist charging higher rates on commodities from Shreveport than are contemporaneously charged for the carriage of such commodities toward Shreveport for an equal distance.

Commissioners Clements, Harlan, and McChord dissented, holding that the commission was without jurisdiction to fix the State rates. Commissioner Prouty concurred, but in his concurrence stated (p. 49):

"While this commission can not establish and should not attempt to establish, directly or indirectly, a State rate, it must in the exercise of the duty put upon it by the act to regulate commerce determine whether the discrimination exists, and in doing that it may and should examine the State rate in comparison with the interstate rate."

So it appears from the three dissenting opinions and the qualifying concurring opinion of Commissioner Prouty that had the case turned upon the matter of fixing the State rates, it would have been decided adversely by the Interstate Commerce Commission.

This case reached the Supreme Court (234 U. S., 342, 58 L. Ed., 1341) on the question as to the right of the Interstate Commerce Commission to make an order in accordance with its findings, which are sufficiently outlined above, and the decision of the commission and its order was upheld by the Supreme Court, which in its final conclusion said (234 U. S., 360, 58 L. Ed., 1351):

"So far as these interstate rates conformed to what was found to be reasonable by the commission, the carriers are entitled to maintain them, and they are free to comply with the order by so adjusting the other rates, to which the order relates, as to remove the forbidden discrimination. But this result they are required to accomplish."

The first section of the act to regulate commerce as originally passed and continued up to this time contains the following proviso with respect to the transportation of passengers and property:

"*Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

The Supreme Court held that this proviso did not apply to this case, and in construing it the Supreme Court said (234 U. S., 358, 58 L. Ed., 1351):

"These words of the proviso have appropriate reference to exclusively intrastate traffic, separately considered; to the regulation of domestic commerce, as such. The powers conferred by the act are not thereby limited where interstate commerce itself is involved."

Thus the proviso in section 1 of the act supports the contention that Congress intended to give the Interstate Commerce Commission the power which it exercised in the case. Thus stands the law on that subject at this time.

In June, 1914, the Louisiana commission, and as the record shows the Shreveport commercial interests, brought a petition for a supplemental order to extend the rate structure as established in the previous decision to the whole State of Texas. This the Interstate Commerce Commission declined to do, but divided the State into eastern Texas by a line drawn through Gainesville and thence down to the Brazos River and to its mouth and prescribed a scale of rates for the territory on that line and east thereof, which should be applied to shipments wholly within the State of Texas moving toward Shreveport. Following upon that decision, which was rendered June 17, 1915, the roads published their class rates on traffic between all stations in east Texas and filed the same with the Interstate Commerce Commission and furnished copy thereof to the Texas commission. The Interstate Commerce Commission in this supplemental case, also with respect to the territory denominated eastern Texas, provided for and ordered that the carriers should cease and desist charging higher rates on any commodity from Shreveport into eastern Texas than was charged for the carriage of such commodities for an equal distance from eastern Texas toward Shreveport, and that such commodity rates should not exceed class rates. Those commodity rates were not published. The western classification was required to be observed.

Upon the publication of these class rates in eastern Texas protests were filed by various commercial interests of the State against the same, and the commission suspended the tariffs and directed an investigation of the entire subject matter involved in all the Shreveport cases, which included the further supplemental petition of the Railroad Commission of Louisiana, in which it was again sought to have the action of the commission in prescribing rates within the State of Texas extended to the entire State.

The whole matter was heard at Houston before Commissioner Hall and has been briefed and argued before the commission. If the commission should sustain the former decision and the contention of the Louisiana commission, the effect would be that the Interstate Commerce Commission would prescribe the rates within the State of Texas and apply thereto the western classification and exercise all such powers in regard to the matters pertaining to transportation as it might exercise in regard to the interstate rates, and then the Texas commission, for all practical purposes, would be abolished. It would not do to say that the Interstate Commerce Commission might adopt in some instances, or might adopt in all instances, the rates as fixed by the State commission because the proposition back of it all is that the power and authority exists with the Interstate Commerce Commission and not the Railroad Commission of Texas.

As subsequently will be pointed out, the remedy therefor lies with Congress to restrict the power of the Interstate Commerce Commission so that it can not have this effect, and in order to do so, to amend the proviso of section 1 as has been quoted hereinabove, of the act to regulate commerce so as to place it beyond cavil that as to all intrastate transportation, rates, rules, and regulations the power of the Texas Railroad Commission may be exercised.

As stating what is believed to be the correct position of the State and the position which was taken by the Dallas Chamber of Commerce and Fort Worth Freight Bureau, the argument made by S. H. Cowan before the Interstate Commerce Commission in opposition to the exercise of such power by the Interstate Commerce Commission is submitted as follows:

ARGUMENT OF MR. S. H. COWAN.

"Mr. COWAN. May it please the commission, time is at least the essence of this argument. I have prepared some matters that go to the very foundation of this case which I desire to present to the commission, and I have, therefore, reduced them to writing in order that I may make no mistake in regard to them, and which, with your forbearance, I will read.

"Reduced to its last analysis, the issue in this case is whether the Interstate Commerce Commission, should it find a difference in rates per mile in Texas as fixed by the Texas commission, intrastate, compared to rates between Texas points and Shreveport, declare that to be a discrimination, and, based on that, take jurisdiction to prescribe all rates, classification, rules, and regulations of all intrastate traffic within the State, and thereby supersede the former rates and regulations of the State of Texas, whether made by the Texas commission or the legislature.

"Stated in another form, to abolish the State commission and set aside the State laws, and even deprive it of the benefits of its constitution providing for the railroad commission.

"These carriers seem to think they have found an easy road to accomplish these wonderful ends, almost by a simple twist of the wrist, but they may find it a rocky one before the end of the journey which starts with loud acclaim.

"It was mentioned by this commission in the previous decisions of the cases now on rehearing that the Texas commission was not a party, and though some of its members were present at the hearing, did not offer any evidence. Whether that is by way of criticism or rebuke of the Texas commission, it has been made use of by these carriers as such.

"It has no place here. The five millions of people of the greatest State of the Union, almost in its swaddling clothes of development, with its 16,000 miles of railroad, and its great harbors, are not subject to a judgment by default before this commission that will deprive the people of Texas of control and utilization of these facilities in intrastate transportation, to the upbuilding of its great industries.

"The Texas commission has the right to stand on the constitution creating it and the law defining its powers, and to proceed to exercise that power as an agency of the State according to its judgment for the upbuilding of that great Commonwealth, and in the manner which it deems fair to the railroads as an important factor in the progress of the people. This we must assume it has done to the best of its ability under the constitution and laws of its creation, and is not to be censured because it did not appear in a case like this where those rights are sought to be taken away.

"This case at the threshold marks a milestone on the road of railroad control, leading to the abolishment of State commissions and repeal of State statutes by the commission, or to a clearly defined limitation of the powers of this commission. It means the control or not of the commerce and development of the State by its own policy as to intrastate commerce or a control of intrastate commerce by this commission.

"The only source of that jurisdiction contended for is where this commission finds a discrimination—an unjust discrimination—in State railroad rates and transportation and interstate.

"Whether the fact of unjust discrimination exists, involves a multitude of things and conditions, and is at last a mere mental conclusion, and may be a mere figment of the imagination, yet it is to be taken as a means of destroying the entire rate situation of a State or control of its local commerce.

"The very essence of the jurisdiction of this commission to act at all is dependent on that finding.

"No discrimination can exist except by the effect of some act prejudicial to the complainant or others, and a mere difference in the amount of freight rates in one locality compared with another can not be a discrimination unless it affects the business interest of the localities or persons served or commodities transported. That must depend on the inbound as well as the outbound rates, yet the commission in this case has ruled out of consideration the inbound rates.

"In this it is in error, as is shown by the decisions of the Supreme Court of the United States, as well as its own decisions.

"At page 46 of my brief I have cited the Texas & Pacific case. This commission will remember that case as being one of the initial cases with respect to undue preference, that being a case where the commission declined to consider the fact that freight had come in by vessel to New Orleans. In reversing that case and sending it back to the commission, the Supreme Court of the United States said:

"'The very terms of the statute, that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced, but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act.'

"For the entire period of its existence the commission did not suppose it could control intrastate traffic or rates up to the decision of this case.

"Is it not a long step to change the power itself of that control to this commission even in the twinkling of an eye by this commission finding that there is a discrimination between State rates on intrastate traffic and interstate rates on interstate traffic? Can it be supposed that any such metamorphose was even thought of by Congress? That is to say, can it be supposed that Congress, not having specifically provided for such a condition, could have supposed that this commission should exercise jurisdiction of the control of the intrastate traffic by the mere fact of finding that in a given instance there was a discrimination? Let that discrimination be corrected. It ought to be corrected. It is within the jurisdiction of this commission to require it to be corrected; but to make use of that finding to draw to itself jurisdiction in their control of all intrastate rates in Texas, and, therefore, the classifications, rules, and regulations, as it seems to me, is something that never could have been thought of as intended to accomplish that object; neither did the original decision in this case attempt to do so. If you will observe in the concurring opinion of Judge Prouty, he stated that this commission could not attempt, directly or indirectly, to control the intrastate rates. This commission went no further in that case than to define what the rates ought to be and the basis of those rates to and from Shreveport. That, we concede, is entirely within its jurisdiction, but to make use of the mere fact of the existence of the discrimination to take charge of the entire subject of the making of all rates and rules and regulations, and, therefore, of the conditions of transportation within the State of Texas, was a marvelous jump in the line of trying to control the rate subject of this country.

"The relationship of the railroads and the complainants manifests itself by the absence of controversy as between them on any point, and a concurrence of all of them in seeking the same thing in the same way.

"The prime object of the railroads is to obtain an increased revenue on Texas intrastate business.

"At the conclusion of the supplemental hearing the examiner observed that they—complainants and defendants—had no dispute. In the decision of the commission in the same case it was stated that there were no new facts developed except a tentative agreement to extend the making of intrastate rates in Texas over the entire State

instead of a division of it on and east of the main line of the Santa Fe from Gainesville to the Brazos River, thence to its mouth, in which territory this commission prescribed the rule to be observed.

"That agreement has been put into actual operation here by the new complaint, and they all unite in the contention that to prescribe the rates which you did prescribe would result in a most anomalous condition; would produce discriminations and upset the entire traffic of the State. Therefore they have all united in the contention that you are to fix the intrastate rates throughout the entire State of Texas because of a mere 20-mile haul from the State line to Shreveport. To use the language of Gov. Roberts in speaking of San Augustine in his notable book, he said it was the center of the surrounding country. According to the proposition asserted here, Shreveport is the center of the earth, and you should take that into consideration, because there is discrimination practiced by the railroads there which they could readily remove, certainly at the smallest sort of expense, and that you are to seize jurisdiction just because of that.

"They all agree upon another proposition, that Shreveport should be treated as though it were within the State of Texas. We could better afford to buy that entire territory than to visit Mr. Atkins or Mr. Luther Walter on the public, who, like the Pied Piper of Hamelin, draw everybody to them, and with their flute they follow. It seems to be the most marvelous proposition I have ever seen, transforming the jurisdiction transmitted by our constitution to our commission and visiting a burden on this Interstate Commerce Commission which it is unprepared to fulfill.

"On the hearing for the increase in Texas rates before the Texas commission, and after class tariffs had been published which are suspended in this proceeding, I. & S., 710, a motion was made by the attorneys for the Texas commission to dismiss or indefinitely postpone the further consideration of their application for increased rates because they were denying the jurisdiction of the Texas commission and asserting that the Interstate Commerce Commission had jurisdiction to prescribe the rates within that part of Texas called east Texas, for which they had filed their tariffs making the increases those which they desired. But they strongly fought that proposition, and the expressions in reply thereto were that the Texas commission ought to advance the Texas rates, and if it did so, to a point satisfactory to the railroads, the same would be applied to Shreveport traffic.

"Now the railroads come forward with a list of commodities where satisfactory advances have been made, another where some advances have been made that are not enough to satisfy them, and another in which no response has been made by the Texas commission to the application for advances.

"As I say, they have confronted you with the statement or a list of some of those advances that have been made, and, as Mr. West said, they are willing to apply them to Shreveport and thus relieve it that far. Some advances have been made which do not suit them and therefore I assume they do not expect to go by the Texas rates in that particular; and in other instances no report has been made by the commission. The object of obtaining greater revenue being at the foundation of the action by both the complainants and the railroads, it is so apparent that a wayfaring man, though a fool, need not err therein. It is a conspiracy in which the minds of all meet and concur to the end of obtaining additional revenue for the railroads in the State of Texas, and so the burden of the complaint, as shown by the argument here, and as shown by their briefs, is that they are not getting enough revenue. It is not for this commission to resort to increasing the intrastate rates in order to produce revenue for them; neither can you assume jurisdiction because you may think they are not getting enough, because that jurisdiction has not been committed to you.

"Take the single item in which we have been very much interested for a great many years, the item of beef cattle. (I have come to a point where they call me a steer, which is denied.) On beef cattle in Texas the single line rate for 200 miles is 17.5 cents; that is, for distances from 200 to 230 miles under the Texas commission's scale the rate is exactly the same, 17.5 cents. The Texas commission's rates on beef cattle and stock cattle are made by the mileage scale, not just every mile counted, but it jumps a certain amount in cents per hundred pounds for certain increased distances. For instance, 200 miles is 17.5 cents, and 229 miles is 17.5 cents. Why could they not apply the Texas scale with all reasonableness to such few shipments as go into Shreveport? That would have been an easy proposition. Furthermore, the small amount of shipments that move there could not have affected these railroads. It simply shows you that the intention in alleging discrimination there is for the purpose of having you fix a higher scale for the entire State of Texas for the handling of the product of more than 6,000,000 head of cattle a year and to take out of the hands of the Texas Railroad Commission the making of these rates. That is their object, and none other. Will this commission lend itself to that? If it finds a discrimination existing in the cattle rates under the Texas scale, and under some scale they have made into Shreveport, will they not require the adoption of the Texas scale to Shreveport rather than enter upon the great undertaking of fixing the whole of the rates within the State of Texas for the transportation of the enormous number of cattle that are transported in that State? The same thing will apply to nearly all sorts of traffic that moves by the mileage scale. Take, for example, up to 245 miles, according to your class tariffs and you will find the same thing. It is but slight trouble to have applied the Texas commission rates as they existed in those cases, as Mr. West assures you they have done or will do in these cases where the Texas commission has now advanced certain commodities. Why not? That is the simple way to do it.

"As I said in the outset, this proceeding marks a new departure in the progress of railroad regulation in this country. It can not be expected that the people will give up their first experiment of controlling rates and regulations within the State, abolish the State commission, and deprive their legislature of the power to act itself should it see fit to do so, just because of the mere finding of this commission that some discrimination exists in some given instance.

"I trust this commission will consider this subject from the standpoint that if you have jurisdiction to remove the discrimination you will not resort to the method which has been pointed out. It reminds me of a case where, in trying a murder case, an old gentleman was called as a venireman. Under our Texas statute each venireman is required to rise and answer questions touching his qualifications to serve, and the first question is, 'Have you any conscientious scruples in regard to inflicting the death penalty as a punishment for crime?' When that question was propounded to this old gentleman, he said, 'Well, judge, I don't reckon I have, but,' he said, 'I think it ought to be very sparingly administered.' So it is with this commission. They ought very sparingly to administer that enormous jurisdiction which the supreme court seems to give them when it comes to stepping into a State and fixing State rates because of some discrimination that exists somewhere.

"I must hasten to another point for fear I overstep my bounds in time.

"Mr. Commissioner Lane said in the first opinion that if the inbound rates to Shreveport were artificial, that is, made by the railroad, then that was to be taken into consideration. The record in this case shows that none of the shipments move into Shreveport except by railroad. I am invoking, therefore, that doctrine announced by this commission in that case, and when you adjusted the Texarkana-Shreveport rates relatively you then considered the fact of the movement of traffic in by rail to both places, but you gave to Shreveport a somewhat lower rate on some things at least if the traffic moved through the Vicksburg Crossing.

"There is no difficulty in adjusting this discrimination except the difficulty that arises out of the desire on the part of our railroad friends to secure larger earnings for themselves in Texas. Maybe they ought to have them, but this is not the tribunal to come to to get them simply by first securing you to say that there is discrimination, and therefore you will take over the fixing of all of those rates. It is just like the case of the doctor who said if he could throw a man into fits he knew that he could cure the fits.

"The railroad commission of Texas has a multitude of things to consider. How could we establish a glass factory, Mr. West, on the Missouri, Kansas & Texas Railroad at Wichita Falls without some advantages that would move that glass out to the points of consumption? It was moved there from a point in Kansas. Innumerable things of that kind move into Texas. Can we have nothing to say with regard to the development of industries in our great State? Shouldn't we be accorded rates which, under the circumstances, are reasonable and which will produce revenue which was not produced before? It is not a reduction of revenue. It is an increase of revenue. So it was throughout the entire hearing for the railroad commission of Texas.

"Many instances were brought up where it was shown that increased rates would actually reduce the revenue, so if revenue is the question for this commission to decide, you have not half heard the case. I say it is not. The commission has no power or jurisdiction because of its desire to increase the revenue, to take jurisdiction over the rates, regulations, and practices of the State of Texas in order to cure a discrimination which can be done with great ease by simply adding the 20 miles to the Texas rates according to the scale of the Texas rates, and where it happens that that will increase the rate, then let it be increased, but where it happens that it would not increase the rate anyway, then the very same privilege would exist for Shreveport when it ships in the other direction into Texas. You will have to consider the facilities for doing business. You will have to consider what it costs them to secure the raw material, as in the case of peanuts, which have been mentioned here, in order

to know whether or not there is a discrimination. It can not exist in the abstract. It is always in connection with the facts. Those facts must apply to something concrete, something that is being done, and when they speak of the fact here that Shreveport can go only such and such a distance, and that Dallas and Fort Worth can only go such and such a distance, why is it? Because of two rates, the inbound and the outbound, and the cost to manufacture. It is said, of course, that in many cases this commission will not attempt to adjust commercial conditions, and yet you can not decide the question of discrimination in any other way than by considering who it hurts, how it hurts them, and what it is that hurts them.

"So it is in this case that I figure, if I may be permitted to say so, that this commission has made a mistake in not considering the inbound rail rates to Shreveport as well as to north Texas points.

"One more point, your honors: It was assumed that the rates up to 245 miles were not too high, but there was no evidence in the record in the original case, and there was none in the supplemental case, outside, perhaps, of an expression of opinion given by my friend, Mr. Atkins, for whom I have the very highest regard as to his ability, but maybe not so much respect for some of his opinions—as I say, there was no testimony to show that those conditions and circumstances of transportation were the same.

"It is announced here that there is a different situation when you apply the matter of relative conditions to traffic moving north and south and to that moving east and west. Certainly. Why?

"You take the main line of the Gulf, Colorado & Santa Fe Railroad, that moves traffic to Fort Worth and Dallas, and look in I. & S., 555, at the freight operation sheets which were filed in that case, and you will find there that the density of traffic on the main line of the Santa Fe in Texas runs more than 1,000,000 tons per mile of line. It is one of the heaviest densities of traffic in this whole country. You will find the main line of the Missouri, Kansas & Texas runs that. Those main lines are the ones which handle this stock traffic. You will find that so far as the Cotton Belt Railroad is concerned, it can scarcely furnish the axle grease for the cars that haul its ties. There is the Cotton Belt on one side and the Texas & Pacific on the other, both reaching Shreveport, both reaching there from Fort Worth. The Texas & Pacific are making money, and the Cotton Belt people say they are losing money. How in the world they have lost it for those 30 years I don't know, but they say they have been losing it for 30 years. Does that show a difference in the condition of transportation? If these railroads are not prosperous to some extent in Texas I would like to know why. We have had the greatest railroad development in Texas in the last 10 years by far of any other State in the Union. The Santa Fe has plastered the Panhandle all over with railroads, and they have one of the best railroads there is in the West, and are still acquiring and building railroads, not right at this time because they have an abundance of them. Of course the Orient Railroad can not make any money, and the Brownsville Railroad can not make any money. A lot of those railroads were built in anticipation of a development which did not take place, and consequently they can not make any money, but none of that is a question for this commission to decide. The question is, Should the discrimination at Shreveport be removed? Let the railroads remove it as they please. If they think they can develop railroad commission rates, as Mr. Commissioner Lane suggested, let them try it. They can not plead here that this was put in by the rules of the commission of Texas. That was one of the things which was urged in the original case. Those rates have been charged in Texas. They said, 'You made no effort to withdraw them.'

"Don't forget another thing. There was a time when the Texas commission, on account of the Texarkana situation, made a certain percentage of reduction in rates up to Dallas and Fort Worth and that territory, but that has long since passed. It was one of those emergency rates that were taken out, and the flat rate applies to-day just as it does all over the State. You can not assume that at the end of 245 miles these rates are a factor upon which to build an additional charge. Why? Because these rates up to 245 miles were made with the view of taking care of the extra haul that would move beyond that for no additional charge. Do you suppose the railroad commissioners of Texas were so ignorant that they did not look at it that way? Judge Reagan was there at the time the compromise was made and the rates were agreed to, but it was not a binding agreement. It could not be under the law. They were put in, however. They were not ignorant men.

"The 245 miles embraced within is compensation for the balance of the transportation into common point territory. To use that as a factor here on which to begin to build your additional rates is a subject that I say this commission is not investigating. The Texas & Pacific has a very heavy density eastward, but the Cotton Belt does not. Furthermore, the movement of empty cars, which is an enormous proposition when it comes to the matter of expense, is northbound and eastbound, whereas, from Shreveport into Texas the empty movement is far less in proportion.

"The CHAIRMAN. You have consumed your time. If you desire to do so, the commission will be glad to have you file with the reporter any part of your argument which you were unable to present.

"Mr. COWAN. There are a great many matters that I would like to urge before this commission, but I think I have pointed out enough already to show the absurdity of the method that is now being attempted to be enforced upon this commission.

"I thank you."

The position of the Louisiana interests and of the Texas railroads was in support of the Interstate Commerce Commission exercising this power. The Louisiana interests wanted to secure all of the benefits of the Texas rates or to deprive the Texas people thereof, and the railroads to use this means of securing an increase in revenue.

It is plain, therefore, that under the decisions heretofore rendered by the commission, and the decision of the Supreme Court here referred to, that if the people of this State are to have the benefit of regulation by law or by the Texas commission, of the railroad rates, regulations, and practices as applied to purely State business, it must seek that right through an act of Congress. It is safe to say that no State is so situated that the Interstate Commerce Commission may not find a discrimination existing by virtue of the State rates compared to the interstate, and based upon that finding to take over the jurisdiction, should it decide to do so, and prescribe all the State rates and matters pertaining to transportation and which affect the service and rates.

Therefore to secure the rights of the State which have been exercised up to the date of this decision, the provisio of the first section of the act should be so amended as to read:

"*Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid: *And provided further*, That the fact that a discrimination or a preference may be found to exist by reason of the difference between any State rate, classification, rule, regulation, or practice of any common carrier and the interstate rate, classification, rule, regulation, or practice of such carrier, whatever the effect may be upon interstate commerce, shall not authorize the Interstate Commerce Commission, by virtue of any of the provisions of the act to regulate commerce, to in any wise annul, abridge, or modify the power of the State, exercised through its legislature or through any commission or agency established for that purpose, to prescribe all such rates, classifications, rules, regulations, and practices as may be provided by the laws of such State, or to interfere with the free exercise thereof, with respect to intrastate transportation or commerce."

With this amendment the law will be as it was supposed to be at the time of the enactment of section 1 in 1887, leaving to the States their rights in the premises with respect to strictly intrastate business, and leaving to the Interstate Commerce Commission its full powers and jurisdiction with respect to interstate business. The question is: Shall the State regulate the State business and preserve the power of the Constitution, laws, and agencies to that end? If so, the power of Congress must be invoked to do so.

Mr. BYARS. That is all I care to say, Mr. Chairman.

The CHAIRMAN. Mr. Dorsey, you may now proceed.

STATEMENT OF MR. N. R. DORSEY, PRESIDENT EAST TEXAS CENTRAL DISTRICT FARMERS' UNION, HENDERSON, TEX.

Mr. DORSEY. Mr. Chairman, several years ago some members of the Farmers' Union of Texas organized a committee for the purpose of getting better prices for farm products for the farmers, and this committee (of which I became a member some years ago and have been active in its workings ever since) found out, that owing to the prevailing freight rates, we were compelled to sell our farm products to parties living in Texas only.

We then began working on freight rates and succeeded in getting rates which enabled us to sell some of our farm products to parties outside of Texas, with the result that the farmers gained several

millions of dollars during one year, more than they had ever received before (and are still gaining) through the efforts of our labors.

We are now working to secure equal rates from points in Texas to all Gulf ports on certain farm products, as this will enable us to reach greater competition in the sale of farm products: and we oppose any law of Congress which would, if effected curtail the powers of the Interstate Commerce Commission, and which would have the effect to build up any one community or any one State at the expense of the farmers.

I am not thoroughly posted in regard to the technical ins and outs of the Shreveport rate case decision, and can not discuss it; but it is very evident that the suits which resulted in this decision were largely the outcome of the work done by our committee in behalf of the Texas farmers.

At a recent meeting of the various district farmers unions of Texas, at Dallas, we learned that a bill was now before Congress which would have the effect, if enacted into law, to virtually nullify the advantages which the farmers of Texas gained by that Shreveport rate case decision; and we addressed a letter to Senators C. A. Culberson and Morris Sheppard, of Texas, and asked them to oppose any legislation which would limit the authority of the Interstate Commerce Commission. I would like a copy of that letter to be put into the record.

The chairman of our committee couldn't come and I was urged to come, and when I heard the hearing was to be on June 30 I was afraid I couldn't make it. Just before I left Dallas for my home at Henderson, Tex., I dictated a letter and a telegram to Senator Morris Sheppard and requested him to arrange so that we would have a hearing before the committee in case we could not get there by Friday, June 30.

Since the farmers have been able to reach outside competition in the sale of their farm products, which they can now do, owing to the freight rates which we have secured, we have made millions of dollars more than we would have made if we hadn't been able to reach outside competition. We are satisfied with this condition, and, instead of having rates which will build up any one community or any one State, we want rates which will enable us to reach all sorts of competition in the sale of our farm products, and also to enable parties living outside of Texas, and who have goods to sell that we have to buy, reach us in the sale of such goods, so as to give us all the benefit of competition in and out of the State. We want to be in a position to sell and buy where it is to our best advantage; and if freight rates will build up merchants, it is a mighty poor thing for the farmers and other consumers.

I am a farmer and reside on my farm about 5½ miles from Henderson, Tex.; I don't understand this question as well as I would like to, but I have done considerable work on it during the last two years. I really can not afford to give it much time.

We want freight rates that will be just alike to jobbers, consumers, and to the carriers; but we don't want rates that will build up individual firms, corporations, cities, or States, and especially when the farmers have to pay.

During the last several years our various farmers' union meetings have passed resolutions which apply very much to this bill, and I want to file a copy with this committee of a resolution which we sent out to different farmers' union meetings, and which is published in the Farmers' Fireside Bulletin, of Arlington, Tex.

This particular resolution was adopted by the Hunt County Farmers' Union on January 14, 1916, and other farmers' union meetings adopted similar resolutions before and since January 14, 1916.

Mr. Chairman, I have here some resolutions which have been passed by the various farmers' unions of Texas which I would like to have inserted in this record as part of my remarks. I want to state that the letter from the chairman of the marketing committee of the Farmers' Educational and Cooperative Union of America asks that in the event Mr. Ford does not reach Washington that I represent them.

The CHAIRMAN. The letters and resolutions referred to will be incorporated in the record without objection.

(The letters and resolutions referred to are here printed in full, as follows:)

DALLAS, *June 25, 1916.*

United States Senator MORRIS SHEPPARD,
Washington, D. C.:

The farmers desire to be heard on the bill which we understand comes up before the Senate committee next Friday. Please arrange so we can be heard if we don't get there on that date. We have just closed our meeting and we have all got to go home first before we can get away.

N. R. DORSEY.

DALLAS, TEX., *June 23, 1916.*

Senators C. A. CULBERSON and MORRIS SHEPPARD,
Washington, D. C.

DEAR SIRS: At a conference held in Dallas yesterday and to-day between our different district farmers' unions Mr. R. D. Bowen, of Paris, Tex., and who is a member of our marketing committee, informed us of the good work you are doing we farmers in Washington, and we assure you we appreciate it.

We understand that some interests are endeavoring to have legislation enacted by Congress that will prohibit the Interstate Commerce Commission from regulating interstate rates freely and curtailing the powers of that body, and taking the Shreveport rate case as an excuse, and we respectfully ask you to use your influence and prevent the passage of any legislation which will curtail the authority of the Interstate Commerce Commission, and which would enable a State railroad commission to make rates which would be oppressive to the producers or which will prevent producers from reaching all possible outside and competitive markets in the sale of our farm products.

We would like to hear from you.

Yours, respectfully,

D. E. LYDAY,
President North Texas District Farmers' Union, Ravenna, Tex.
N. R. DORSEY,
President East Texas Central District Farmers' Union, Henderson, Tex.
C. F. STEVES,
President Southeast Texas District Farmers' Union, Runge, Tex.
LOUIS GORMES,
President Pecan Valley District Farmers' Union, Bangs, Tex.
E. MCGINTY,
For Wichita Valley District Farmers' Union, Rotan, Tex.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA,
Many, La., June 26, 1916.

Mr. N. R. DORSEY, *Washington, D. C.*

DEAR SIR AND BROTHER: As I told you in Dallas, I shall write Brother Ford and request him to go to Washington and appear before the Senate committee on June 30 at the hearing on that bill and oppose in behalf of our committee any legislation which will have the effect of curtailing the power of the Interstate Commerce Commission.

I shall send Brother Ford some papers giving information on the subject, and request him to represent our committee, as he is a member of it, and I hope he can go, but in case he can not go then I ask and request that you represent our committee, and I authorize you to do so, and, if need be, you can sign my name as chairman of the committee and also as president of the Louisiana division to any necessary document.

If Brother Ford is not in Washington when you get there, inquire for his mail and open a letter which I have addressed to him, and you will find full information as to what I can send. I fear it won't be possible for me to go, but I will keep trying and if I can't get there, you represent us if Brother Ford ain't there.

Fraternally, yours.

I. N. MCCOLLISTER,
Chairman Marketing Committee Association State Presidents.

We notice in the public press, and especially the Dallas News, where the different traffic men employed by various mercantile and commercial bodies of Texas are called to meet in Austin on the 20th to take such action as will induce the Texas Railroad Commission to force the railroads to maintain such freight rates as will force the farmers and other consumers of Texas to buy all their supplies in Texas only, and that they propose to call on Gov. Ferguson to aid them in that attempt; and this is contrary to what is to the best interests of the people of Texas, so we, the Hunt County Farmers' Union, resolve,

That we oppose any such policy as will force the farmers and other consumers of Texas to buy their supplies in Texas only, as we are entitled to such freight rates as will enable us to buy our needs and sell our farm products in markets where it is to our advantage, and we request Brother D. E. Lyday to go to Austin and be there on the 20th, and protect us against any such action, and also to call on Gov. James E. Ferguson to protect our interests in this respect, and the secretary send a copy of this to Brother Lyday and to Gov. Ferguson and the Dallas News and the Farmers' Fireside Bulletin and The Banner.

Adopted at the regular meeting of the Hunt County Farmers' Union in Greenville, January 14, 1916.

E. W. TAYLOR,
President Celests, R. 3.
O. O. PINKERTON,
Secretary Leonard, R. 2.

MCFALL, ALA., *June 29, 1916.*

I. N. MCCOLLISTER, *Washington, D. C.:*

Impossible for me to meet you in Washington Friday; sickness.

O. P. FORD.

DALLAS, *June 24, 1916.*

Hon. MORRIS SHEPPARD,
United States Senator, Washington, D. C.

DEAR SIR: We have just learned that there will be a hearing on a bill next Friday which provides, in a general way, for the curtailing of the powers of the Interstate Commerce Commission, and we understand that this legislation has been suggested and is being pushed on account of the Shreveport rate case.

Several years ago the Farmers' Union commenced working on freight rate matters, and we have been big gainers by it, and we have been working a long time to secure the same rate on cotton and other farm products from Texas points to New Orleans as prevails to Galveston, and our work in this direction was largely responsible for the Shreveport rate case being taken up, and we want no laws which will prevent our getting competitive rates or which will curtail the powers of the Interstate Commerce Commission, for we have found that the farmers have more to gain in interstate rates than local rates.

We don't exactly understand the bill which will be argued before the committee next week, and we are getting a committee together to visit Washington, as we sure don't want any laws which will upset what we have done and which will make it possible to prevent our getting all advantages we can in the way of competition. If I think there is any doubt about us getting there in time I will send you a telegram.

Yours, truly,

N. R. DORSEY,
President, Henderson, Tex.

P. S.—We were sure proud when Brother R. D. Bowen told us how you had stood by and helped us in such legislation as we asked for and we will try and not make any mistakes, as you suggest, and we hope you will continue to stand by us, and we believe you will.

N. R. D.

MANY, LA., *June 27, 1916.*

Mr. O. P. FORD,
President Alabama Farmers' Union, McFall, Ala.

DEAR SIR AND BROTHER: It was my good fortune to attend a meeting of the Northeast Texas District Farmers' Union and other district farmers' unions in Dallas a few days ago, and we had a great meeting. And while there I told them of some news that I had heard about a bill having been introduced in Congress which would have the effect really of curtailing the powers of the Interstate Commerce Commission, and I inclose you a copy of the bill, and request that you go to Washington and meet other members of our committee and appear before the Senate committee on June 30 and oppose any legislation which would have the effect of curbing the authority of the Interstate Commerce Commission.

It may be impossible for me to get away, and I want you to act as chairman of our marketing committee in my absence, and you brothers agree among yourselves as to who shall act as spokesman before the committee. I will try and send you more particulars, and I will try and get Brother R. Lee Mills to go if I can't go.

Fraternally, yours,

I. N. MCCOLLISTER,
Chairman Marketing Committee Association State Presidents,
Farmers' Educational and Cooperative Union of America.

P. S.—In case Brother Mills can not go, and no one else is there from Louisiana, I want you to represent Louisiana and sign my name to any document that might be necessary both as president of the Louisiana Farmers' Union and chairman of our committee.

I. N. MCC.

Mr. DORSEY. I desire to say that there will be present at this hearing 10 members of the delegation. We represent the farmers' interests in this rate case, and I wish to further state that I do not understand everything about rates, while I have studied the matters for several years and given it my attention as best I could.

Mr. HAINES. I would like to ask a question. You say you can not afford to give the matter much time. If you make a million dollars do you not think it would pay you to devote a little time to it?

Mr. DORSEY. I mean myself. I am not able to run around and foot these bills myself.

The CHAIRMAN. You do not make the million then?

Mr. DORSEY. No, sir.

Mr. WALTER. You have not the State to pay the bills for you and you are not paid for doing the work?

Mr. DORSEY. No, sir.

Mr. WALTER. Do you mind stating how many States are covered by your organization, and its approximate property?

Mr. DORSEY. I am not able to do that, but you have some idea about what the State of Texas is. It is an empire within itself.

Mr. WALTER. I merely wanted——

Mr. DORSEY. There are several other States that I have authority to represent here in case Mr. Ford fails to reach this point, which oppose any legislation which will take away the power from the Interstate Commerce Commission.

Mr. BARROW. Would you object to filing now in the record a statement as to the other organizations that you represent?

Mr. DORSEY. They are all farmers' union organizations.

Mr. BARROW. I thought that you might state it in the record to show how fully you represent these farmers' unions.

The CHAIRMAN. You may furnish that information to the reporter later.

(The data, subsequently furnished, appears above.)

Mr. WALTER. What is your Texas membership, 10,000 or 100,000?

Mr. DORSEY. It is something over 200,000.

Mr. MAYFIELD. You stated in answer to a question by Mr. Walter, that the Texas membership of the farmers' union was something over 300,000, as I understood you.

Mr. DORSEY. I stated that I could not tell him exactly.

Mr. MAYFIELD. Well, approximately how many?

Mr. DORSEY. They are possibly 200,000.

Mr. MAYFIELD. Do you mean to leave the inference that you are here as a representative of the State organization of the farmers' union?

Mr. DORSEY. Mr. Chairman, am I to answer these questions?

The CHAIRMAN. I do not think it necessary. I do not think it is necessary to answer questions except when propounded by members of the committee.

Mr. DORSEY. I want to state for the benefit of the committee that the membership of the farmers' unions are stronger than Mr. Mayfield suspects it to be because they are not kept quarterly in good standing with the organization, but in case of emergency——

The CHAIRMAN. I will state that the committee would prefer not to go into that matter. We have not very much time at our disposal.

Mr. HAINES. Mr. Chairman, if we are to be denied the right of cross-examination, I want to say at this point of the record for the men from Texas that Mr. Dorsey does not represent the farmers' union and that he has not the authority of the farmers' union to come here and make the statement he has made, and that I am prepared to establish these facts before this committee at any time the committee desires to hear them. It is unfair to us, we think, to have this statement go into the record unchallenged and unquestioned when we have evidence which will demonstrate the fact that these are not the sentiments of anywhere near the majority of the large number of members of the Farmers' Union of Texas.

Mr. BYARS. That is exactly what I got up to say.

The CHAIRMAN. You may present such matters hereafter, if you desire. The committee does not desire to go into an extended controversy of this character. Mr. Dorsey does not claim to know much about rates, and certainly has not attempted to give very much information on this subject.

Mr. DORSEY. I have a good deal of data, Mr. Chairman, in my grip, and if the committee desires to take the time they can investigate and see what I have done along this line. I do not want to take up the time of the committee to go through the data with regard to my work of this rate case. You will find that I have spent a good deal of valuable time working on these rates.

Mr. SHEPPARD. The first speaker I wish to introduce is Hon. Earle Mayfield, railroad commissioner, State of Texas.

The CHAIRMAN. Mr. Mayfield will proceed.

STATEMENT OF MR. EARLE B. MAYFIELD, RAILROAD COMMISSIONER, STATE OF TEXAS.

Mr. MAYFIELD. Mr. Chairman and gentlemen of the committee: I am here to represent the State Railroad Commission of Texas in favor of the Sheppard bill, and I desire to thank the committee for giving me an opportunity to make a few remarks in favor of Senate bill 5242, as introduced by our junior Senator. Before discussing the merits of the bill, however, I desire to reply briefly to certain remarks made by Mr. Dorsey, of Texas.

From the reading of the statement by Mr. Dorsey, which he has just filed with the committee, I could not tell whether he was in favor of the Sheppard bill or whether he was opposed to it, and I am sure the committee experienced the same difficulty, but being acquainted with the gentleman, and knowing something about his maneuvers with reference to rate matters down in Texas, I knew in advance that Mr. Dorsey was opposed to the Sheppard bill, and so I take this opportunity to inform you of the gentleman's position.

Mr. Dorsey says that he represents the Farmers' Union of Texas. I challenge that statement and call upon Mr. Dorsey to show his credentials. Mr. Dorsey has no more authority to speak for the Farmers' Union of Texas here in opposition to this measure than has the attorney for the railroads, who sits by his side. I am a member of the Farmers' Union of Texas myself, and I know something of the sterling manhood and patriotism of the men who compose that organization, and I say to you, Mr. Chairman, that Mr. Dorsey is placing the Farmers' Union of Texas in a false light before this committee, when he stands here and claims that he has authority to represent the Farmers' Union of Texas in his opposition to the Sheppard bill.

The greatest political controversy that ever occurred in Texas was between James S. Hogg and George Clark. This contest occurred back in the nineties and the main issue between these two distinguished statesmen was whether or not a railroad commission should be created in the State of Texas. Hogg championed the creation of the commission and Clark opposed it. The contest was long and bitter and will ever be remembered in the political history of our State. All special interests, including the railroads, supported actively the candidacy of Mr. Clark, but the farmers of Texas rallied to the support of their friend, James S. Hogg, and he was elected governor of our State and the railroad commission was established. The Railroad Commission of Texas, Mr. Chairman, owes its creation more to the farmers of our State than probably to any other class of people. The farmers of Texas believe in their railroad commission and when I see a farmer from our State appear before this committee, claiming that he represents the Farmers' Union of our State and

oppose a bill introduced by the junior Senator of our State, the purpose of which bill is to keep our State Commission from being destroyed, it makes me blush with shame. I repeat, Mr. Chairman, that Mr. Dorsey has no authority to speak for the Farmers' Union of Texas against this measure, and we ask this committee not to consider him as a representative of the Farmers' Union of our State. If Mr. Dorsey has the authority, it will not take him long to produce it, and I again call upon him to show us where he got his authority to speak for the Farmers' Union of our State.

Mr. Chairman, the Texas Commission has been conducting an investigation into the question of the reasonableness of our State rates. That investigation has covered over a year. During that time the commission received a number of letters from Mr. Dorsey, requesting the commission to raise the freight rates on cotton, live stock, etc., and advising the commission that the farmers of Texas were willing to stand an increase in freight rates on all farm products. These letters, received under the signature of Mr. Dorsey, were so written that they bore suspicious earmarks, and we summoned Mr. Dorsey to appear before the commission and to testify as to who wrote those letters. The records of our office will show that Mr. Dorsey testified that most of those letters were written or prepared by Mr. R. D. Bowen, of Paris, Tex., a man who spends a great deal of his time in the city of New Orleans and at other points in the State of Louisiana. A few days ago Mr. Bowen was compelled to give his testimony before the commission of Texas, and when interrogated as to whether or not he wrote the letters which the commission had received under the signature of Mr. Dorsey, did not deny nor controvert the testimony of Mr. Dorsey, but admitted that he had assisted and had aided in the preparation of most of those letters. When Mr. Bowen was confronted with the vouchers from the Gulf, Colorado & Santa Fe Railroad, showing that he had received the sum of over $1,500 during the thirtieth legislature for services rendered that railroad in behalf of its merger bill and against the 2-cent passenger bill, he admitted to having received the money, but claimed that none of the money went to him directly, but was paid to him for the purpose of reimbursing him for what he had paid out to others. These are the men, Mr. Chairman, who are here opposing the measure which seeks to protect the life and integrity of the Texas State Railroad Commission.

Now to the merits, Mr. Chairman, of the measure that is before you for consideration. The distinguished gentlemen from Louisiana would have this committee believe that the only question that is involved in this controversy is whether or not the city of Shreveport, La., should have fair and just rates. They are correct in saying that the necessity of the Sheppard measure grew out of the decision of the United States Supreme Court in the Shreveport rate case. They are not correct, however, when they claim that the Sheppard bill would nullify the benefits which the city of Shreveport has won under the decision of the Supreme Court of the United States. They are clouding the issue, Mr. Chairman. We say unhesitatingly that every rate discrimination against the city of Shreveport should be removed. Not for a moment would we contend that the city of Shreveport or any other city in this Union should be discriminated against.

We want no wall erected around the State of Texas, because we desire commerce to flow freely between Texas and our sister States. Right here, Mr. Chairman, I desire to make reply to a statement which has often been made in certain quarters to the effect that the policy of Texas was to encircle itself with a wall for the purpose of protecting home industries. That statement is not true, and the man who makes it is either not posted on the history of rate regulations in this country or he makes it with the deliberate intention of placing the Railroad Commission of Texas in a false light. Years ago, before the Interstate Commerce Commission had been granted the power to prescribe maximum rates, the Railroad Commission of Texas promulgated a tariff, carrying rates 20 per cent less than the regular tariffs. This particular tariff applied only to a limited territory in the northeast section of our State, commonly known as the "burnt district." The interstate rates into the "burnt district" from outside jobbing centers were much less than the interstate rates to the cities of Dallas, Fort Worth, Paris, Clarksville, and Greenville. Bear in mind, gentlemen of the committee, at that time the Interstate Commerce Commission was powerless to make rates. John H. Reagan, who was chairman of the Texas commission at the time the 20 per cent reduction tariff was promulgated, stated that the Texas commission would go to the Interstate Commerce Commission for relief, but that the Supreme Court of the United States had decided that the Interstate Commerce Commission could not make rates, and therefore it was useless to appeal to the Interstate Commerce Commission. What did the Texas commission then do? It promulgated a tariff carrying rates 20 per cent less than the regular tariffs applying only to the territory above mentioned. What was the purpose of the tariff? Was it to protect the merchants and manufacturers of Texas? No man who knew John H. Reagan would for a moment make such a claim, because the very mention of the word "protection" was nauseating to him. That special tariff was put into effect to protect no one, Mr. Chairman. Its sole purpose was to give to the people of that territory the benefit of competition and to enable the jobbing interests and manufacturers of Texas to compete in that territory with outside interests.

But that is past history, Mr. Chairman. That special tariff has been canceled. Besides the present commission can not be bound by the acts of three commissioners 20 years ago. Precedent, indeed, has its weight in deciding these issues, but the Railroad Commission of Texas does not follow precedent altogether. The acts of yesterday may not be the acts of to-morrow, and the present commission of Texas stands for free trade with all our neighbor States, and we say "Shreveport is entitled to have fair and just rates."

The question which I desire to discuss for a short while, Mr. Chairman, is one that rises above the question of fair and just rates to Shreveport. These men are not here opposing the Sheppard bill because it would prevent Shreveport from having fair and just rates, because it would not. They are here in opposition to the Sheppard bill because they know that if the Sheppard bill becomes a law they will be blocked in their efforts to secure for Shreveport rates to which she is not justly entitled. In the first application before the Interstate Commerce Commission in the Shreveport case all that was asked was that the discrimination against the city of Shreveport

caused by the interstate rates from that city into Texas being too high be removed; but, gentlemen of the committee, the Interstate Commerce Commission is now asked to strike down the entire system of the Texas State rates as promulgated by the Texas commission. So the issue is not a local one. It has so enlarged since the first hearing in the Shreveport case that we are now confronted with a situation that affects the welfare and prosperity of every State in the Union.

When the National Association of Railway Commissioners met in annual convention in this city, November 17–20, 1914, it adopted a resolution which declared that a State rate on purely State traffic should not be struck down until a court having proper jurisdiction had found it to be unreasonable, and the Sheppard bill simply seeks to carry that resolution into effect. I call attention to the passage of that resolution by the National Association of Railway Commissioners to refute the statement that the Sheppard bill deals only with a local condition.

The Sheppard bill is short and simple. There can be no misunderstanding as to its terms. It simply provides that before a State rate on purely State traffic can be nullified it must be found to be unreasonable by a court having proper jurisdiction. It says let that rate stand which is the reasonable rate. Can there be any objection to such a proposition? How these gentlemen can oppose this bill is beyond my comprehension. The bill appears to me to be so fair and just that the reading of its terms proves the equity of the proposition.

To see the necessity of the Sheppard bill, Mr. Chairman, it is absolutely necessary to briefly refer to some of the incidents growing out of the Shreveport case.

The Shreveport case originated in 1910, when the Legislature of Louisiana appropriated the sum of $15,000 for the purpose of prosecuting their complaint before the Interstate Commerce Commission. In 1911, on March 8, the Railroad Commission of Louisiana filed a complaint before the Interstate Commerce Commission alleging that the city of Shreveport was discriminated against, in that the interstate rates from Shreveport to certain Texas points were unreasonably high, and therefore these high interstate rates were prejudicial to Shreveport and discriminated against that city. Now, gentlemen of the committee, as we proceed in this discussion I would have you bear in mind all along the way that not one word of complaint was said against the Texas State rates. The case was submitted before the Interstate Commerce Commission on January 16, 1912, and on March 11 of that year the Interstate Commerce Commission, by a vote of 4 to 3, sustained the complaint and ordered the discrimination against the city of Shreveport removed.

Now let us see what were the findings of fact by the Interstate Commerce Commission and what was its first order. First, it found that the city of Shreveport was discriminated against. Second (and if I misstate one word of the record I shall be glad to have the gentleman correct me), it found, as alleged by these gentlemen, that the interstate class rates were too high, and ordered these rates reduced and suggested a tariff practically the same as the class tariff as promulgated by the Texas commission.

Mr. WALTER. Up to 245 miles; that was all.

Mr. MAYFIELD. Correct you are, because the Texas class tariff reached its maximum at 245 miles. A few moments ago you inquired how the people from Elysia, La., would get relief in case of the passage of the Sheppard measure. I answer you that the people from Elysia got relief when the Interstate Commerce Commission ordered the interstate rates reduced to the level of the Texas class rates, and you know that such an order would never have been issued unless the Interstate Commerce Commission had believed that the Texas class rates were fair, just, and reasonable, and all that the Sheppard bill does is to protect the State rates until they have been declared to be unreasonable by a court having the proper jurisdiction. Let us not forget, gentlemen of the committee, that in the original Shreveport complaint the Interstate Commerce Commission was dealing with two different kinds of rates, viz, class rates and the commodity rates. While the Interstate Commerce Commission found the interstate class rates from Shreveport into Texas were too high, and ordered them reduced to the level of the Texas class rates, yet it made no order whatever as to the commodity rates and nowhere in its decision did the Interstate Commerce Commission even hint that the interstate commodity rates were just and reasonable and could not be reduced. No interstate rates, class or commodity, were found to be reasonable. On the contrary, the Interstate Commerce Commission found the class rates to be unreasonable and as to the commodity rates said that they were higher than the Texas commodity rates.

What was the next step in that case? The railroads appealed from the decision of the Interstate Commerce Commission to the commerce court, where the order of the Interstate Commerce Commission was sustained on April 25, 1913. A few moments ago, Mr. Chairman, when some one stated that the railroads were very much interested in the Shreveport case, the able attorney who is here representing them in opposition to the Sheppard bill smiled and I wondered why he smiled. Gentlemen, the railroads are greatly interested in this case. because every turn in the case has brought them an increase in rates.

I am sure the railroads will never forget Mr. Walter and Mr. Barrow and Mr. Adkins, because after five years of work and worry about all these distinguished gentlemen have gotten out of the Shreveport case has been an increase in rates for the carriers.

Why did the railroads appeal from the first decision of the Interstate Commerce Commission? The answer is easy: Because the Interstate Commerce Commission had ordered the discrimination against Shreveport removed, and up to that time the only way the carriers could remove that discrimination was to reduce the interstate rates to the level of the State rates, and this meant a shrinking in their revenue. I do not censure the carriers for appealing the case, because they did exactly what I would have done or you would have done. We have never had any objection, Mr. Chairman, to the first order of the Interstate Commerce Commission in the Shreveport case because that order simply commanded the railroads to remove any discrimination that might exist against the city of Shreveport. The trouble arose when the Commerce Court rendered its decision.

The Commerce Court treated the case as if the Interstate Commerce Commission had found the interstate rates to be reasonable, and attributed to the Interstate Commerce Commission such finding of fact which to this good hour it has never found. The opinion of the Commerce Court was based upon that assumption and but for that assumption the Commerce Court could never have rendered the opinion which it did.

The railroads appealed the case to the Supreme Court of the United States, where it was argued on October 28, 1913, and on June 8, 1914, the Supreme Court of the United States sustained the decision of the Commerce Court in an opinion written by Mr. Justice Hughes, Mr. Justice Lurton, and Mr. Justice Pitney, dissenting. The Supreme Court of the United States fell into the same error as the Commerce Court. Assuming that the Interstate Commerce Commission had found the interstate rate from Shreveport to certain Texas points to be reasonable rates, the United States Supreme Court held that the railroads would not be compelled to reduce those rates, but told the carriers that they could remove the discrimination against the city of Shreveport by raising the Texas State rates to the level of the interstate rates.

It might be presumptious, Mr. Chairman, for one so young in the practice of the law as I to charge the United States Supreme Court with such an error. I will therefore not leave my statement unsupported, but will prove it by the words of the able assistant attorney general of Louisiana, who sits so gracefully before us.

I hold in my hand a copy of the proceedings of the National Association of Railway Commissioners, which met in this city November 17–20, 1914. The Williams resolution was under discussion by the association, and the assistant attorney general of Louisiana, Mr. Barrow, was making an argument in opposition to the resolution, when Commissioner Atkinson, of Missouri, interrogated Mr. Barrow as follows: I read from page 212.

Mr. ATKINSON of Missouri. I should like to ask the learned attorney general of the State of Louisiana whether the Interstate Commerce Commission found, as a fact, that the interstate rates were reasonable and just and could not be reduced in the Shreveport case? I have heard it stated that they did not pass on that question, and yet that seems to be the very crucial point which the Supreme Court assumed to have been passed upon in the decision, in the opinion written by Mr. Justice Hughes.

Mr. BARROW of Louisiana. The order of the Interstate Commerce Commission has never found any rates to be reasonable and just except the class rates which they have prescribed as to three railroads only, and that was really a test case. It is a question of authority with the Interstate Commerce Commission. It has never been presented in this form before, and as you know the whole country was interested and agitated over the case, and the question was whether the commission in any event had the authority to remove that discrimination by causing the rates to be advanced or reduced.

Mr. ATKINSON of Missouri. If the Interstate Commerce Commission did not determine that the interstate rates from Shreveport into Texas were reasonable and just and could not be reduced, how could the Supreme Court or the Interstate Commerce Commission strike down the State rate, when the State commission was not made a party to the suit, and the court clearly holds, in the Minnesota case, that it had no jurisdiction to make State rates.

Mr. BARROW of Louisiana. My answer to that is that the commission has not yet stricken down the State rates. They may do so under the decision of the Supreme Court, but whether they will do so or not is a question which of course we can not anticipate.

The railroads in Texas affected by the decision of the United States Supreme Court in the Shreveport case issued new tariffs applying on purely State traffic moving toward Shreveport. Those tariffs bore

no I. C. C. number, but stated upon their face that they had been issued in accordance with the decision of the United States Supreme Court in the Shreveport case. Is it not strange, Mr. Chairman, that those tariffs bore no I. C. C. number, but simply stated that they had been issued in accordance with the decision of the United States Supreme Court?

Following the decision of the United States Supreme Court in the Shreveport Case, the railroad commission of Louisiana filed a supplemental petition before the Interstate Commerce Commission on June 18, 1914, asking that the original order of the Interstate Commerce Commission which affected only three railroads, viz, the Texas & Pacific, the Houston, East & West Texas, and the Shreveport Railroad, be enlarged so as to cover the entire State of Texas and be made to embrace every railroad in Texas. Such an order, if it had been granted, gentlemen, would absolutely wipe out the entire system of State rates on purely State traffic as promulgated by the Texas commission, provided the courts upheld the order.

Mr. WALTER. Not in the supplemental plea.

Mr. MAYFIELD. Yes, sir; in the supplemental plea.

Mr. WALTER. In what case?

Mr. MAYFIELD. In the case which I am discussing, the Shreveport case, and on June 23, 1914, the Interstate Commerce Commission entered an order requiring all the carriers to show cause why such supplemental petition as filed by you should not be granted. In your petition you alleged that the other railroads in Texas, than the three above mentioned, would not establish the same scale of rates which the Texas & Pacific, the Houston East & West Texas, and the Shreveport Railroad had promulgated under the decision of the United States Supreme Court except upon a supplemental order and I can not understand why you would question your own petition. I refer you, Mr. Walter, to the second decision of the Interstate Commerce Commission in the Shreveport case, page 474, which decision was written by Commissioner Hall. Further hearing was had by the Interstate Commerce Commission upon this supplemental petition in the city of Shreveport on October 27, 1914. At this hearing the cities of Dallas, Fort Worth, and Texarkana filed petitions of intervention, but these petitions were denied upon the ground that they sought to enlarge the real issues in the supplemental proceedings. Presently we shall see, gentlemen, if the "real issues" were in fact enlarged and who did the enlarging. When the supplemental petition was heard at Shreveport, October 27, 1914, the "parties" to the case submitted nothing, as Commissioner Hall says in his opinion on page 476, "except a 'tentative agreement' between the parties, upon which to go further and fix reasonable maximum rates, both class and commodity, effective over all the lines of all these defendants throughout the great State of Texas."

Who were the parties to the case? The "parties" to the case, Mr. Chairman, were the city of Shreveport, the Louisiana State Commission, and the Texas railroads.

What was this "tentative agreement" to which Commissioner Hall referred in his decision? Why, it was nothing more nor less than an "agreement" between the city of Shreveport, the Louisiana State Commission, and the Texas railroads to divide the great State of Texas into two separate and distinct States for rate-making purposes?

The Interstate Commerce Commission adopted this "tentative agreement" when it said in its decision on June 17, 1915, "We shall confine our further order to the territory between Shreveport on the east, and a line drawn through Gainesville, Fort Worth, and Waco via the Brazos River to the Gulf of Mexico on the west. We shall refer to that part of Texas on the east of this line as eastern Texas." So anxious were some of the railroads, Mr. Chairman, to become a party to this "tentative agreement" that they entered their appearance and waived notice, one of them being the San Antonio & Aransas Pass Railway, which fell west of the line, but would have been "in it" had the "tentative agreement" been to embrace all Texas instead of taking only half of it.

Let us not forget, Mr. Chairman, that in their supplemental petition in the Shreveport case, these gentlemen who sit here in opposition to the Shreveport measure, petitioned the Interstate Commerce Commission to prescribe rates for the entire State of Texas, and now we find them "backing up" on that proposition and filing a "tentative agreement" in which they say that they would be satisfied to take only half of our State.

I can imagine the "parties" to this "tentative agreement" getting together in a room in one of the hotels in the city of Shreveport and discussing how they will carve up the State of Texas. They place a map of Texas upon a table and all gather around, as so many boys at a birthday party, each eager to get a nice slice of the "melon" which was soon to be cut. Of course, Mr. Walter wanted to swallow the entire melon at once, as verified by his supplemental petition filed before the Interstate Commerce Commission on June 18, 1914, but wiser counsel prevailed. I can imagine that the general attorney who represented the railroads around that table, and who is one of the greatest lawyers in the entire country, arose from his chair and said, "Gentlemen, let us go a little slow in this matter; let us not be too greedy. Texas is a pretty big State, Mr. Walter, about as large as the New England and Middle Atlantic States put together, and if we swallow the entire State of Texas at once, we might become nauseated and lose what we swallow. So let us bite it just half in two." And that is exactly what they attempted to do.

Beginning at Gainesville up in the extreme northern part of Texas, they drew a line down through Fort Worth, Waco, thence via the Brazos River to the Gulf of Mexico, and said to the Interstate Commerce Commission, "this is our 'tentative agreement' and we will be satisfied if you will prescribe rates for all that part of the State of Texas lying east of that line." As above stated, the Interstate Commerce Commission adopted the "tentative agreement," and basing its second decision in the Shreveport case upon that agreement, undertook to prescribe rates on purely confessedly State traffic in all of that territory lying east of the imaginary line just described.

One-half of the State in population, and far more in traffic, most of its large cities and centers of trade and its greatest and largest ports, were included in that territory designated as "Eastern Texas." The Interstate Commerce Commission then said, "Limited to this territory we shall now deal with the relief sought," and then without further ceremony issue its order prescribing the class rates, minimum weights classifications, rules and regulations on purely State traffic in the State of Texas east of that imaginary line, taking

away entirely the right of the State of Texas to prescribe rates in that territory. Bear in mind, gentlemen, that the prime object of the Interstate Commerce Commission was to cure a case of discrimination against the city of Shreveport, but oh, what a tangled web of discrimination it wove, when it undertook to prescribe rates for purely State traffic moving wholly within the State of Texas. Thousands of illustrations could be given, but one will suffice. Amarillo, Tex., is west of that line drawn through Gainesville, Fort Worth, and Waco, thence via the Brazos River to the Gulf of Mexico, and therefore was not affected by the supplemental order in the Shreveport case. The rate therefore from Galveston to Amarillo would be the rate prescribed by the Railroad Commission of Texas, which on first class would be 87 cents over a distance of 668.6 miles; while the first-class rate from Galveston to Fort Worth, a distance of only 332.6 miles, under the tariff constructed by the Interstate Commerce Commission would be 98 cents, and Amarillo could then ship back to Beaumont, on an 80-cent rate for first class, while Fort Worth, 336 miles nearer to Beaumont than Amarillo, would be compelled to pay a rate of 98 cents on first class.

So it seems that the Interstate Commerce Commission itself "enlarged" the real issues in the supplemental proceedings which it said that the petitions of intervention of Dallas, Fort Worth, and Texarkana would enlarge, and for this reason were denied. So while the supplemental order of the Interstate Commerce Commission might have cured the alleged discrimination against Shreveport, it produced a thousand cases of discrimination more complicated than the one it sought to remedy.

Mr. BARROW. Would you mind stating in the record whether anybody, party in the Shreveport rate case, was left out of that agreement.

Mr. MAYFIELD. I was not present myself and I can not answer that question definitely.

Mr. WALTER. Your associate, Mr. Williams, was there?

Mr. MAYFIELD. Certainly he was, and so was the chairman of our commission, Allison Mayfield, but they were not "parties" to the "tentative agreement" and took no part whatever in your conference around the table where you decided to swallow only half of our State, and then if that went well to later call for the other half.

The fact that the Texas commission has been wise enough to steer clear of this entire controversy seems to have worried you, Mr. Walter, no little. Certainly you would have been delighted for the Texas commission to have laid its head upon the block and then you let go the ax that would have cut its head off. But far be it from the Texas commission to walk into such a trap.

The Texas commission, Mr. Chairman, has been criticized by certain interests for not having intervened in the Shreveport case. Why should we have intervened—the reasonableness of our rates had not been challenged and our jurisdiction over State rates had never been questioned. But granting for the sake of argument that the reasonableness of the Texas rates had been challenged, the Texas commission would not have undertaken to have established their reasonableness because by law they are prima facie reasonable and the burden of overcoming that presumption is upon the party attacking those rates.

Mr. BARROW. But everybody who was a party to the case was in that conference.

Mr. BYARS. All except Fort Worth and Dallas.

Mr. MAYFIELD. Yes, that is true. You made an effort, Mr. Byars, and so did Mr. Maxwell, representing the city of Dallas, to file a plea of intervention, but you were not permitted to do so by the Interstate Commerce Commission, on the ground "that the issues in the case would be enlarged."

The home of our junior Senator, Mr. Sheppard, is at Texarkana, Tex., which is in the extreme northeastern part of our State, and I doubt if Senator Sheppard realized that eastern Texas extended as far north as Gainesville, as far west as Fort Worth, and as far south as the Gulf of Mexico, until he read the supplemental order of the Interstate Commerce Commission in the Shreveport case.

On September 14, 1915, at the request of Mr. Haines, of Galveston, Tex., and Mr. McCormack, of Fort Worth, Tex., the Interstate Commerce Commission suspended its supplemental order until January 13, 1916. Following the suspension of the tariffs and the extension of the supplemental order, the Railroad Commission of the State of Louisiana, realizing that where the supplemental order had cured the case of discrimination against the city of Shreveport, it had created a thousand new cases of discrimination, filed with the Interstate Commerce Commission a new and further complaint, wherein it was asked that the same rate structure as was prescribed in the supplemental order be extended so as to cover the entire State of Texas. This petition was docketed and heard by Commisssioner Hall at Houston, Tex., December 15, 1915, at which time hearing was had into the entire Shreveport rate situation. Thus, Mr. Chairman, do we find these distinguished gentlemen forsaking their "tentative agreement" and again asking the Interstate Commerce Commission to prescribe rates for the entire State of Texas. I can imagine another "round table" conference, Mr. Chairman, at which gathered the great rate lawyer, Mr. Walter, of Chicago, the expert rate clerk, Mr. Atkins, of Shreveport, and the learned counsel of the railroads. Can we not hear one of these distinguished gentlemen say, "We made a mistake when we adopted that 'tentative agreement'—it will never stand up, it will never run the gantlet of the courts, because our original complaint before the Interstate Commerce Commission was based on the ground of a discrimination against the city of Shreveport, and while this 'tentative agreement' cures the case of discrimination against the city of Shreveport, it has incubated cases of discrimination by the thousand in the State of Texas. There is only two things that we can do. We must either back entirely off from this case, or we must ask the Interstate Commerce Commission to prescribe rates for the entire State of Texas." Mr. Chairman, they chose to follow the latter course and that is the very reason why the passage of the Sheppard bill becomes an imperative necessity and the tariffs promulgated by State commissions can not be struck down until declared unreasonable by a court having the proper jurisdiction.

Mr. BARROW. That was a new complaint.

Mr. MAYFIELD. That makes no difference, Mr. Barrow. If it were a new complaint, it was only another phase of the Shreveport case. The new petition which you filed asked the Interstate Commerce Commission to wipe out the imaginary line which the "tentaitve agreement" drew through Gainesville, Fort Worth, Waco, thence via the Brazos River to the Gulf of Mexico, and to prescribe rates for the entire State of Texas, and you introduced at Houston some testimony to show that Shreveport had received a shipment of wool from some little town a way over close to Mexico.

Mr. WALTER. Do you mean that was all of the testimony that was offered.

Mr. MAYFIELD. No, sir. I think that you offered testimony to show that a few crates of cabbage were shipped from Brownsville, Tex., to Shreveport, and some testimony was offered with reference to peanut shipments.

Mr. Chairman, I have briefly reviewed the history of the Shreveport rate case, so that this committee could fully understand the necessity of the Sheppard bill. The original complaint filed in the Shreveport case was based solely on the ground of discrimination in rates against that city, but as the case progressed, the issues enlarged at each different stage of the proceedings, until these gentlemen, who sit here in opposition to the Sheppard bill, filed their last petition in which they petitioned the Interstate Commerce Commission to strike down the entire system of the rates of the State of Texas. As I heard this distinguished assistant attorney general of the State of Louisiana plead before Commissioner Hall at Houston, Tex., last December and ask that the entire system of our State rates, as made by the Texas commission be struck down, and the Interstate Commerce Commission prescribe rates for the whole State of Texas, I wondered what Louisiana's gifted son, Judah P. Benjamin, Attorney General of Jefferson Davis's Cabinet and later counsel of the Queen of England, would say could his voice but speak from the silent tomb. This distinguished gentleman will not deny that he made such a plea.

Mr. BARROW. Yes; I deny it. You point it out in the record.

Mr. MAYFIELD. Go read your last petition. I suppose that it was prepared by Mr. Walter, and although it carried your name and title I must conclude that you have never read it, or you would not now deny your plea,

Mr. BARROW. We are asking for an equalization of rates from Shreveport to Texas points.

Mr. MAYFIELD. Yes; that is true, Mr. Barrow; you are asking for an equalization of rates from Shreveport to Texas points; but how, sir, do you propose to secure that equalization? You propose to secure what you are pleased to call an "equalization of rates" by asking the Interstate Commerce Commission to strike down and to destroy the entire system of State rates on purely State tariffs as promulgated by the Texas commission.

Mr. BARROW. I made no such statement, nor have I ever plead such a statement.

Mr. MAYFIELD. I will leave it to any of these gentlemen who are familiar with the record of this case, if I am not correct.

Mr. BYARS. Yes, sir; you are correct.

Mr. MORGAN. The pleadings are there and there is no doubt but that you have stated them correctly.

Mr. MAYFIELD. The last petition, Mr. Chairman, filed by these gentlemen in the Shreveport case, speaks for itself, and I tell you that the petition which was filed by these gentlemen, who are here

opposing the Sheppard bill, asked the Interstate Commerce Commission to prescribe rates for the entire State of Texas, and it ill becomes the learned assistant attorney general of the State of Louisiana to deny or disown his own petition.

It is this last petition, Mr. Chairman, filed by these distinguished gentlemen in the Shreveport Rate case that makes the passage of the Sheppard bill an imperative necessity, because in that petition these gentlemen are asking that State regulation of business be done away with. And, gentlemen, when we brush away the cobwebs in this controversy we know that the real issue is whether or not we are going to stand for the abolition of State railroad commissions. There is no use to shy away from this question. We had just as well meet it right now as a little later on. For my part, Mr. Chairman, I am not afraid to say to you that I stand for the preservation of the rights of the State to regulate purely State traffic. These gentlemen who oppose the Sheppard measure are here asking that State regulation of business be done away with, while we are here to defend the wisdom of State regulation of business.

Why should we abolish State regulation of business, Mr. Chairman? Has not almost every great reform in this country originated with the States? Did not many of the States of the Union abolish slavery before it was finally abolished in the Nation? Did not many of the States of the Nation enact effective pure-food laws long before the Nation passed any pure-food legislation? Did not a number of the Middle Western States in the early seventies undertake rate regulation long before the Interstate Commerce Commission was created? Go read the history of progressive legislation in this country and you will find, Mr. Chairman, that nearly every great reform has originated with the States. In 1895 Texas, under the stock and bond law, given to us by that great commoner, Gov. Hogg, valued her railroads, and 20 years after Texas had blazed the way we find the Federal Government directing the Interstate Commerce Commission to place a valuation upon the railroad properties in the United States. After having worked upon the proposition since 1913, expending several millions of dollars, the Interstate Commerce Commission had not yet finished its valuation of the Texas Midland Railroad, a short-line road down in Texas, about 150 miles long.

There is a good reason, Mr. Chairman, why reforms have originated with the States. It is because it is much easier to create sentiment in favor of a proposition among a few than it is among the many. A few citizens in a State who agree upon a certain proposition can get together and in a short time create sentiment in favor of their proposition sufficient to carry it to a success in that State, while it would take years of effort to obtain national consideration of the same proposition. The States, Mr. Chairman, constitute what might be called experimental stations for the Nation. For instance, if your State, Nevada, experiments with the passage of a certain law, and it is a success, Colorado will take it up and pass it, Oklahoma will do likewise, and so will other States until finally the Nation adopts it. Now, Mr. Chairman, since history proves that most of the great reforms have originated with the States, I ask, would it be the act of wise men to do away with that which we have gained from experience and which constitutes our principal source of advancement along reform lines?

Had not the different States of the Union experimented with the great reform measures which have come to us in the last generation and found them to be good, do we not know that a great clumsy Nation like ours would be years in adopting these reforms?

I call your attention, Mr. Chairman, to the magnificent record of the States when forced into the courts to defend their decisions. Mr. Clifford Thorne says "the Interstate Commerce Commission has been reversed by the courts on railroad questions as often as all the State commissions put together," and then it must be remembered that the State commissions have been blazing the way.

While it is true that State commissioners have made many mistakes, yet the fact that they were the pioneers in railroad regulation must not be forgotten and whenever a State commission has made a mistake the railroads have always found an open door to the Federal courts, and as long as that situation remains the railroads have nothing to fear; but if they can escape State regulation they have much to be thankful for. So, Mr. Chairman, I am not surprised to meet the attorney for the railroads here in opposition to the Sheppard bill, because the Sheppard bill seeks to protect the integrity of our State commissions.

It is contended by some, Mr. Chairman, that State and interstate traffic is so closely interwoven that it is difficult to make a division between earnings and operating expenses and values. That is true, Mr. Chairman, and it is one of the very difficult questions yet to be correctly solved; but suppose we abolished State lines altogether and did away with State regulation of our railroads, we would not be relieved of that difficulty. We would still be confronted with the short haul, and there would still have to be made the division between operating expenses and earnings and values. Therefore it would make no difference whether the Interstate Commerce Commission or a State commission had control over a short haul; the short haul would still remain a complex problem.

The State commissions, Mr. Chairman, understand the demands of local conditions much better than the Interstate Commerce Commission, and it will be a sad day for the shippers and the producers and the consumers of the different States of the Union when they are required to bring their complaints against the railroads to Washington to be submitted to the Interstate Commerce Commission. Never a day passes, Mr. Chairman, but that the Railroad Commission of Texas receives telephone calls and letters by the score asking for adjustment of rates to meet changing conditions, complaints about demurrage, bad service, shortage of cars, overcharges, applications for new depots, etc. Instant attention is given to these matters, and I am glad to say that our commission is fully equipped to handle expeditiously all such matters. Would it be wise, Mr. Chairman, to do away with our State commission and force our people to come to this city, 1,600 miles away, for relief?

Not one of us, Mr. Chairman, is here to contend that a State rate should interfere with interstate commerce. Texas desires, above all things, free intercourse of commerce between all the States. Whenever there is a conflict between a State rate and an interstate rate, the Sheppard bill says that the rate which is the reasonable rate should stand and the unreasonable rate should yield. Can anything

be fairer? Let the Supreme Court determine in case of a discrimination which rate is reasonable, and then let the reasonable rate stand. The Sheppard bill provides for nothing more nor less. Its terms are short and easily understood. It simply provides that a State rate can not be struck down until it has been declared unreasonable by a court having the proper jurisdiction. It is true "the Supreme Court has no power of determining the reasonableness of rates already established, but would it not be better, gentlemen of the committee, to amend the Constitution in that respect than to devitalize our dual system of Government by a virtual amendment in another manner?"

The last petition in the Shreveport case signed by this assistant attorney general of Louisiana, calls upon the Interstate Commerce Commission to prescribe rates for the entire State of Texas, which would do away with State regulation altogether. This is a proposition wholly distinct and apart from determining whether or not a State rate discriminates against an interstate rate. It strikes at the very foundation of our form of government. It is the same proposition, though couched in different language, as the plank in the Republican platform recently adopted at Chicago, which boldly declares for absolute abolition of State railroad commissions. It is the siren song of the "new nationalism" to which we have listened during the last few years until we have almost been lulled to sleep in the thought that State lines should be completely wiped out, and that the States should surrender to the Federal Government their right to regulate and control even their domestic affairs. I protest against such a change in our governmental policy and assert my faith in the fundamental principles which underlie the fabric of our Republic, and upon which it has grown to be the most powerful and influential power in the world. Truly has it been said, "that one of the greatest movements in human history was the American Revolution." The loss of life and treasure in that struggle pales into insignificence compared to the world's great wars, "but the effect of the Revolution upon the political life of the world," says a great historian, "is without a parallel because its chief result was the berth of our Republic and the creation of the first successful federal government in history." Mr. Ellis, in his history of the United States, speaking of the Philadelphia convention which gave to us our dual system of government, very graphically describes its powers when he says, "It created without historic precedent a dual form of government. It combined national strength with individual liberty in such a remarkable degree as to attract the worlds admiration. Never before in the history of man had a government struck so fine a balance between liberty and union, between State rights and National sovereignty. The world had labored for ages to solve this greatest of all governmental problems but it has labored in vain. Greece in her mad clamor for liberty had forgotten the need of strength that union brings and her government crumbled and perished. Rome made the opposite mistake and fostered nationality for its strength until it became a tyrant and strangled the child 'Liberty' to death. It was left for our own revolutionary fathers to join in perpetual wedlock these opposing tendencies as to secure the benefits of both."

The Republican idea of government, Mr. Chairman, was not new and therefore did not differentiate our Government from other governments. There had been republics before ours was created.

It was not the idea of a great empire, because history records that there had been greater, but it was as the historian Ellis says, "The joining in perpetual wedlock of national strength with individual liberty, and States rights with national sovereignty." It was as a great student says, "the creation of a government, large and strong enough to assert its independence among the world powers, to compel respect from others and obedience and order at home, and at the same time provide real tangible local self government to the various individual sovereigns making up that nation." Such, Mr. Chairman, are the fundamental principles underlying our form of government, which enable the American Republic to expand to the western ocean within a century and to encircle the globe with its beneficient influence.

Now, in the very acme of its prosperity, when other nations of the earth are following in its footsteps, when the world is on fire and the oppressed millions of other lands are looking to the federative principles here established as an asylum against the evils of misrule in their own country, the Republican Party proposes to destroy "the chief feature of the American plan of government," and a Democratic assistant attorney general from the Southern State of Louisiana, sits here ready to pull down the chief cornerstone of our governmental structure. I plead for the passage of the Sheppard bill, Mr. Chairman, because it seeks to preserve our dual form of government. I plead for the Sheppard bill, Mr. Chairman, because it does not destroy any of the rights of our National Government, but does go far toward preserving the rights of the States to regulate purely confessedly State commerce.

How the distinguished assistant attorney general from Louisiana can oppose the Sheppard bill is beyond my comprehension, and I want to tell you, Mr. Barrow, that you are sowing to the wind and you will reap the whirlwind. This thing will prove a boomerang to you some day, and you will wish that you had never heard of the Shreveport case. The future historian will record the fact that it was a Southern State that made the first attempt to destroy the rights of the States to regulate purely State commerce and that Southern State was Louisiana.

The Interstate Commerce Commission has under consideration this very moment the petition of the Railroad Commission of Louisiana, which if granted and upheld by the courts of the country would absolutely destroy the right of any State in the Union to regulate even purely State commerce. What the final outcome will be we do not know. But one thing, Mr. Chairman, we do know is that John H. Reagan, as a United States Senator from Texas, probably had more to do with the creation of the Interstate Commerce Commission than any other Member of the United States Senate; and so jealous was Senator Reagan to safeguard the rights of the States to regulate purely State commerce that he wrote into the very first section of the act creating the Interstate Commerce Commission this provision: *"Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property wholly within one State." We know, also, Mr. Chairman, that John H. Reagan, as a Senator from Texas, would never for a moment have favored the creation of the Interstate Commerce Commission had he ever dreamed that 30 years later it would be contended that that

commission could nullify the rates prescribed by a State commission on confessedly State traffic.

Let us not deceive ourselves in the thought that the Sheppard bill is intended to affect only a local condition in Texas. The dictum in the Shreveport case endangers the rights of all the States and the ultimate destiny of every State in the Union is embraced in the Sheppard bill or a similar measure. The question before you, gentlemen, therefore assumes a magnitude and importance far above welfare of any one State.

Let us not forget that the Federal Government owes its creation to the States. The Federal Government might cease to exist and yet the States continue to exist as before. But not so, Mr. Chairman, with the Federal Government in case of the destruction or annihilation of the States. With the extinction of the States the Federal Government necessarily becomes also extinct. The States may survive the Federal Government and form another, but it can never survive them. What may be called a union may spring from the common ruins, but it would not be the Union of the Constitution. By whatever name it might be called, whether Union, Nation, or Kingdom, it would in reality be nothing but that deformed and hideous monster which rises from the decomposed elements of dead States and which is known by the friends of constitutional liberty as the demon of centralism, absolutism, and despotism.

Let us preserve our dual form of government, guaranteed under the Constitution of the fathers, which Gladstone said "was the greatest work ever struck off at one time by the mind and purpose of man." Is it not better, Mr. Chairman, to "bear those ills we have than fly to others that we know not of?"

Mr. MAYFIELD. I should like to have the following paper included in the record.

The CHAIRMAN. Without objection, it will be included.

(The paper referred to is here printed in full as follows:)

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, AND HENRY B. SCHREIBER, CONSTITUTING THE RAILROAD COMMISSION OF LOUISIANA,
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ET AL.

Submitted January 16, 1912. Decided March 11, 1912.

The rates from Shreveport, La., to points in eastern Texas are higher than are maintained from Dallas, Houston, and other cities within Texas to such points under substantially similar circumstances and conditions. This complaint attacks the rates from Shreveport as unreasonable and as discriminatory when compared with Texas intrastate rates of the same carriers. *Held:*

1. That the present class rates out of Shreveport to certain points in Texas on the Texas & Pacific Railway, and on the Houston, East & West Texas Railway are unreasonable, and reasonable rates are prescribed for the future.

2. That the present relation of rates gives an undue preference to the Texas cities in question and effects an unlawful discrimination against Shreveport, and the carriers ordered to cease and desist from charging higher rates upon any commodity from Shreveport to Dallas or Houston or points intermediate thereto than are contemporaneously charged by them for the carriage of such commodity to equidistant points from Houston or Dallas toward Shreveport.

3. That if a State, by the exercise of its lawful power, establishes rates which the interstate carrier makes effective upon State traffic, that carrier does so with the full knowledge that the Federal Government requires it to apply such rates under like conditions upon interstate traffic. To say that an interstate carrier may discriminate against interstate commerce because of the order of a State commission would be to admit that a State may limit and prescribe the flow of commerce between the States.

4. That section 3 of the act, forbidding undue discrimination in favor of or against any person or locality, applies not only as to two interstate hauls but also as to two hauls one of which is interstate and the other intrastate, and the fact that the carrier's rates in the latter case are established by a State commission does not relieve the carrier of the paramount duty, which rests upon it irrespective of its obligation to the State, to so adjust its rates that, as to interstate traffic, justice will be done between communities regardless of State lines. The effective exercise of its power affecting interstate commerce makes necessary the assertion of the supreme authority of the National Government, and Congress has appropriately exercised this power in the provisions of the act touching discrimination.

5. That the provision in section 1 that the act shall not apply to commerce wholly within a State was intended as a recognition of the fact that Congress was not assuming to regulate transportation entirely within the borders of a State and does not by the broadest construction justify the inference that an interstate carrier may pursue a policy of rate making within a State that would affect unlawfully commerce among the States and thus violate the express prohibition of the act against discrimination affecting interstate commerce.

6. That the policy of denying to Shreveport similar privileges in the concentration of cotton as are accorded to Texas cities is also discriminatory, and the carriers will be ordered to make applicable at Shreveport whatever lawful practices obtained in this connection at Texas points on defendant's lines under like condition.

The CHAIRMAN. Congressman McKellar of Tennessee is present and desires to be heard. The committee will hear him. Proceed, Mr. McKellar.

STATEMENT OF HON. K. D. McKELLAR, A REPRESENTATIVE FROM THE STATE OF TENNESSEE.

Mr. MCKELLAR. Mr. Chairman, I should like to say I have received a telegram to-day from the Memphis Cotton Exchange in my district, asking to put in its protest against the passage of this bill. I wish to put that telegram in the record, and will file a number of documents later.

Mr. PRENTIS. May I say in that connection that it is litigation brought by Memphis before the Interstate Commerce Commission that has practically destroyed the whole intrastate systems of rates in Arkansas?

Mr. WALTER. Was that up to the Arkansas conference?

Mr. PRENTIS. In the interest of Memphis the State commission and the State Legislature of Arkansas have been practically overruled by the examiner of the Interstate Commerce Commission.

Mr. MCKELLAR. In view of that statement—this is a subject which I have not yet examined, but unless the matter is closed to-day I shall be very glad to look into it and appear again. If Memphis is wrong she will admit it, and if Memphis is right I shall be glad to take it up with the committee.

Mr. WALTER. You will have no fear of Memphis being wrong?

Mr. MCKELLAR. I believe it is right, but I want to be absolutely sure about it. I don't want to take any position for her that can not be maintained.

Mr. PRENTIS. I am not questioning whether Memphis is right or wrong. I say the laws of the State of Arkansas have been absolutely destroyed by the examiner of the Interstate Commerce Commission.

Mr. WALTER. I challenge that, and in fairness to the Interstate Commerce Commission I demand proof on the part of the speaker.

Mr. McKELLAR. In addition to that, I am sure that Memphis has not injured Arkansas at all, but it is our purpose down there to build up Arkansas in every way in the world we can. We feel very friendly and close to Arkansas, and we are doing all in our power to build up the business interests of that state, I am sure, any injury to it would be, of course, an injury to our city.

Mr. PRENTIS. I am willing to admit that in my excitement I have made my statements too strong, but there is not any doubt about the fact, which I tried to emphasize this morning, that the Interstate Commerce Commission can not possibly—it is not humanly possible for the Interstate Commerce Commission to examine into the complications involved in local rates. The way they do it is to send out an examiner. His report, as I understand it, is secured, and the Interstate Commerce Commission decides hundreds of those cases every year, and it is impossible for them to go into detail. And whether Arkansas is right or Memphis is right, the fact I wish to emphasize is that the State of Arkansas, which for many years thought that it had the right to regulate its intrastate rates, in this way its whole system of rates have been disarranged and abolished.

The CHAIRMAN. The committee will next hear from Mr. H. H. Haines.

STATEMENT OF MR. H. H. HAINES, REPRESENTING THE GALVESTON COMMERCIAL ASSOCIATION, GALVESTON, TEX.

Senator SHEPPARD. Mr. Haines, kindly give your name and address to the chairman.

Mr. HAINES. My name is H. H. Haines; I live in Galveston, Tex.; and I am traffic manager of Galveston Commercial Association, and represent that organization before this committee.

So far as I know now, no member of my family at any time has ever held office, with one exception. At one time one of my parents' great uncles was governor of Connecticut, and the rest of the family do not mention that fact except in a whisper, and since that time we have always tried to live upright lives, so that when I appear before you gentlemen it is not for the purpose of discussing State rights.

When I first went to Texas, about 30 years ago, they called me a d—— Yankee, and I do not know but they were pretty nearly right. Perhaps that is why I never have been able to enthuse on this question of State rights, I am inclined to think that the practical solution of every question, whether it be Federal or whether it be State regulation, is the thing that we ought to discuss and the thing that we ought to have. And to-day I am fighting in Texas for Federal regulation of some things, but I am here opposing Federal regulation of State railroad rates.

I am fighting in Texas for Federal regulation of marine quarantine because I think the Federal Government is in a position to know more, in a position to do more, and in a position to give better service than the health department of the State of Texas, and I am going to continue to fight that as long as I think that is right. Therefore I am not interested in any question of State rights per se as a general proposition.

If I am interested in any proposition before this committee to-day, it is the question of shippers' rights. It is the shippers of the country

to-day, the producers of the country to-day, the manufacturers of the country to-day, who, all combined, serve to make the prosperity of this country. It is not any one of them. They all do their share. And in discussing this situation before the committee I want to discuss it from the standpoint of the shippers whom I represent.

To do that, let me refer, incidentally, to the Arkansas situation that has been mentioned by the gentleman from Virginia.

Do you know that as a result of this difficulty in determining the jurisdiction between State and Federal authorities in the State of Arkansas that the merchants of Arkansas, the shippers of Arkansas, were compelled to pay during the period of that litigation something in excess of $2,000,000 freight charges that were subsequently found to be unreasonable and unjust, and after all the litigation was over the shippers were told that they could secure a refund of this amount of money? Of that amount of money, gentlemen, the expense bills, covering more than $1,000,000, were lost. Of the other $1,000,000 the shippers were compelled to pay to counsel, who looked after their interests, 25 per cent, or $250,000, and out of a total excess charge of $2,000,000, determined by the Federal courts to have been an excess charge, the shippers of the State of Arkansas received back three-eighths. That is all. Now, that occurred and will occur again and again just so long as there is a failure on the part of this Congress to draw the line clearly and distinctly between the authority of the State and the Federal commission. To preserve the interests of the shippers in this matter, the men who pay the freight, the men who suffer in a case of this kind, it is due the people of this country that this Congress determine definitely and decisively in some fashion where this line of demarkation shall be placed and provide for it in such a way that there shall be no deviation from it by either State of Federal authorities. That is the feature that I want to impress upon you gentlemen.

There is no question in the world but what this amendment, offered by Senator Sheppard, will have that very effect without an injury to either State of Federal authority.

Let us take the complaint that was read by the Senator from Missouri to-day. You will remember he said that the city of St. Louis paid a rate of $1.88 from Chicago to East St. Louis, when the bridge charge was only 25 cents, when a combination on St. Louis would make less. If this amendment were adopted St. Louis would be relieved of that discrimination immediately.

Mr. BARROW. How?

Mr. HAINES. The Texas commission, a commission that has been cursed times without number; a commission which I have fought through the Supreme Court of Texas twice, and which I am ready to fight again if they do not do things to suit me, has adopted a rule that the Interstate Commerce Commission has refused to adopt. It is simple. It is so simple that I can not understand why the Interstate Commerce Commission does not adopt it, except that they would be accepting tentatively rates made by State commissions, without a previous investigation on their part. A rule, which if adopted by the Interstate Commerce Commission, would immediately relieve this St. Louis situation, and thousands of others that exist just like it throughout the United States to-day. That rule is this: Wherever the combination of two or more rates is less than a given through

rate, the combination shall apply. Now that is simple, and it looks reasonable, does it not? That is a Texas rule that applies in Texas, and if the Interstate Commerce Commission were compelled under this amendment, as they would be, to adopt that rule, then St. Louis would immediately get the benefit of the two locals, Chicago to East St. Louis and East St. Louis to St. Louis, which would give them a lesser rate into St. Louis than they enjoy now, and yet they are filing a protest here against it. Is this not evidence that that protest has not been seriously considered, and if it has been considered, is it not evidence that the people did not know the effect of this amendment as proposed by Senator Sheppard? That fact is very plain.

Mr. WALTER. Does not that make all interstate rates absolutely in the control of the State authorities?

Mr. HAINES. Until—and you have said something right now—until those rates have been declared by a court of competent jurisdiction to be unreasonable.

Mr. WALTER. And the State of Arkansas shippers lost $2,000,000 while having that determined?

Mr. HAINES. Exactly, because of the present situation of the statute, and if this amendment had been in effect that would not have happened.

Mr. MAYFIELD. Then it is your idea that the question of reasonable rates should go back to a court of competent jurisdiction?

Mr. HAINES. Exactly; but until the question of reasonable rates goes back to a court of competent jurisdiction, considering all conditions in a way they can not be considered to-day, and until the present Congress has provided for the adjudication of those matters.

Let me give you a sample: I have been in this business for 15 years representing shippers, and I run across this thing every day of my life, and I know the peculiarities and the technicalities we run across. Let me cite to you a little concrete example that is on my desk in Galveston to-day that came in three days ago.

One of our firms shipped two cars of grain to Galveston for export. Under the export tariff there is no demurrage chargeable on export grain at Galveston, nor for that matter at any other port. There is not at this time. This firm has a warehouse located about two blocks from the wharf and they unloaded these two cars at their warehouse. Now the rule reads, in this peculiar language, that export grain, or commodities entitling them to the export free time, shall be unloaded from the car to the pier. This man unloaded his in his warehouse, and he very promptly, and very correctly, in my judgment, says that he is being discriminated against in that rule because his warehouse is not on the pier, and that the man who has a warehouse on the pier has the advantage over him. He was charged $35 demurrage on those two cars and had to pay it.

Under the plan in Texas I can write to the Texas Railroad Commission an agreed statement of facts; I can send it by mail; it will cost me a 2-cent stamp, and I will get a decision; I will get it pretty quickly, too. But when I have to take that matter up with the Interstate Commerce Commission, and, as this man did, have to write to the Interstate Commerce Commission and ask them to give an informal decision in that case, he gets a letter from my friend McGinty, secretary of that commission, in which Mr. McGinty says, "The commission never had a case like that to come before them, and can not pass upon it."

Mr. MAYFIELD. Informally?

Mr. HAINES. It means that the man must file a formal complaint; that the Interstate Commerce Commission must send an examiner to Galveston; that we must have a hearing, and possibly an argument, in Washington; that I or somebody else must come up here and argue this case—must travel 4,000 miles for $35. Now, what is the result? The man forgets that he lost $35, and, just as sure as you gentlemen are sitting here, these railroads know that. And these railroads know that under the present system, as it has been evolved, thousands and thousands of dollars will be paid by the people of this country that they ought not to pay because they have not the means under the machinery which you have inaugurated to get the proper kind of protection, and that they will not have until you get some sort of amendment to this act, as has been proposed by the Senator from Texas. That is what it means. We can not afford to come up here from Texas every time we have a little complaint of that kind; yet we have thousands of them that amount to thousands of dollars every year.

Mr. WALTER. How would you get your $35 under the bill you have here through court and get a final determination and save anything out of $35?

Mr. HAINES. You could not, because that was interstate traffic, and I am only citing that case to show the inconvenience of the jurisdiction of the Interstate Commerce Commission over matters which may be centered in Texas.

Mr. WALTER. Under the present plan?

Mr. HAINES. Under any plan.

Mr. WALTER. That is an argument in favor of Senate Resolution 60.

Mr. HAINES. No. If they have that much trouble with a little complaint that is theirs, how much more are they going to have with a lot of complaints that are not there?

Those are things that I, as a representative of the shippers, see. That is why I say I do not care anything about this question of State rights; I am interested in the question of shippers' rights, and they have some.

Now then, the city of Galveston claims that it has been discriminated against by the Railroad Commission of the State of Texas. It has been on exactly the same plane as the city of Shreveport. It has had to pay a higher rate out of Galveston to a large portion of the State of Texas than any other city in the State of Texas pays, simply because it got a lower rate in and the gentleman who served Shreveport in the capacity in which I served Galveston will tell you that I have said to him time and time again that his complaint was just and it ought to be remedied. I say so now.

I see absolutely no excuse for the situation that exists at Shreveport for so many years unless it be that those people wore pajamas all the time. It ought to have been remedied years and years ago.

Now, then, let us see what the present situation develops in the matter of relief. My friend Atkins went to Shreveport about six years ago. About the first thing he did that I heard of over there was to file the Shreveport case. I think it was one of the first things he did. Certainly it was one of the first notable things he did, and under the present system of procedure that this amendment seeks to remedy,

my friend Atkins, assisted by my friend Walter and my friend Barrow, the assistant attorney general of the State of Louisiana, have gotten exactly out of the front door to the front-door step, and no farther, in six years.

Now, I say to you gentlemen that that condition of affairs is intolerable. If that be true, and if that is the best that the Interstate Commerce Commission can do under the present conditions, where they have assumed to have, up to this Shreveport case, no jurisdiction over anything but interstate traffic, what in the name of Heaven is going to happen to us if we unload onto the Interstate Commerce Commission all State-rate making as well? Can you imagine, and can you tell me?

Senator BRANDEGEE. Suppose they adopted some revision of the present law, constituting the commission so that it was operated in divisions of the country similar to the judicial districts of the Federal courts; suppose that you did not have to come to Washington about a $35 dispute with the railroad, but suppose there was a branch of the Interstate Commerce Commission, or a component part of it, located in the Louisiana and Texas section of the country, one of five or six or eight districts, so that all the inconvenience of administration from a distant point were abolished, you would simply have the naked question of whether you would have a Federal tribunal, reviewing offenses against the Interstate Commerce Commission Act in that section of the country, or four or five or six State tribunals. What have you to say about that?

Mr. HAINES. I would have to say that it would be the same complaint as at the present on a minor scale. Senator, there is no adjustment that I can see of that character that would be so nearly satisfactory to the shipping interests as the present one. If you would divide the present States of the Union into eight districts, then you have increased the present subdivisions of local adjustment in the ratio of about 6 to 1.

Mr. WALTER. Instead of having 48 States you would have 8 commissioners; is that what you mean?

Mr. HAINES. Yes; from 1 you have increased it to 8, and from 48, or approximately so, you have decreased it to 8.

Senator BRANDEGEE. I am asking because I have heard that solution suggested, and I want both sides of that if possible.

Mr. HAINES. Yes, sir; it has been suggested.

Senator BRANDEGEE. I can see how one tribunal, if in active close touch with the branches of it, so their policies would be the same, I think one tribunal could manage the question of rates in the New England section pretty well.

Mr. HAINES. Well, you know, we in Texas—I hope you are not offended with us. I understand you are from Connecticut.

Senator BRANDEGEE. Yes; and I understand your great grandfather's uncle was also?

Mr. HAINES. Yes, sir. You know, we in Texas, with all kindness in our hearts, look upon Connecticut—and I have a right to look upon it from some recent connections—as a pretty good sized county.

Senator BRANDEGEE. Of course, the whole of New England would not make a potato patch for Texas.

Mr. HAINES. Exactly, and another thing you do not raise nearly as much of the devil as we do in Texas with the Mexicans.

Senator BRANDEGEE. We have long realized that.

Mr. HAINES. That question of the subdivision of the Interstate Commerce Commission is one that I have interested myself in, and I have expressed to the members of this commission who have consulted with me, or asked my opinion of it, the idea that it should be done, not because local rates may be turned over to that commission but in order that the commission may properly and promptly take care of the present business that is handled by the commission.

You know, as perhaps we all know, that there is no part of this Government that is worked as hard, that is worked as thoroughly, as the individual members of the Interstate Commerce Commission to-day. They have no time for themselves; they have practically no time for their families. If you notice the members of that commission, every night those men take home bundles of books to read, because they do not have time to read them in their offices. If you go to their office to-day with a matter of importance, do you know what they say to you first? "Mr. Haines, I have got an engagement now; I will give you two minutes." Every time it is so, and we, who have a great deal of work, a great deal to do with the Interstate Commerce Commission, if we are at all appreciative of their condition, we do what we can to facilitate that, even to the sacrifice of our own interests.

Now, then, I do not propose to support anything that at this time would work an injury to anybody. But it does seem to me, if we may go right back to this Shreveport case, that a rate that has been in effect since 1893 in the State of Texas is fairly presumptive to be a reasonable rate.

Now, I am not a lawyer, but it does seem to me that if the question were put up to me judicially and I were told that for 20 years a given rate had been carried by a railroad without protest, I should begin to believe that that rate was fair and justly reasonable. That has been the situation in Texas since 1893, I think it was, when the last class rate tariff was put into effect.

Mr. BARROW. In 1902.

Mr. HAINES. That was just a reissue of the same figures, taking up some minor corrections. The figures are the same. Since that time those rates have been in effect in Texas. On that system of rates, gentlemen, there has been built up in Texas the most peculiar and at the same time the most effective credit system that you can imagine.

My folks are not Texans, but I have learned the conditions as they exist in Texas and have learned to appreciate a condition down there that is entirely foreign to that under which I was educated and under which I had my experience as a young man, and when I went to Texas I found many things I did not understand that since I have learned to appreciate for their true value. One of them is that peculiar system of rate making in Texas called "Texas common-point territory."

When I first went to Texas, Texas did her business very largely with New York, with St. Louis, and with Chicago. Why, we young fellows had to buy most of our haberdashery from St. Louis because we could not get what we wanted in the towns in Texas where we lived, and our business relations were with those people. But gradually there has been built up under this peculiar system of rate making in Texas a distributing system where, according to the evidence in

this Shreveport case, a jobbing house is to be found within almost every 50 miles of Texas territory. What does that mean? It means that the credits of Texas, which formerly had been carried in St. Louis, in New York, and in Chicago, that the credits of Texas, mind you, are now carried in Texas by these jobbing houses in Texas.

Mr. Chairman, I was one of the men in Texas who inaugurated and carried out the "Buy a bale" of cotton movement, and I could tell you some of the most touching incidents of that campaign. Some of you would hardly believe it. Do you know what would have happened to Texas if we had still been doing our credit business in New York, in St. Louis, and in Chicago? I will tell you. Ninety per cent of the business houses in Texas would have been closed up, their assets would have been sacrificed, simply because the men in St. Louis, the men in Chicago, and the men in New York did not know those Texas people, and they, in their desire to protect themselves, would have sacrificed those men, who in turn are carrying the farmer of Texas, who had been getting 15 cents for his cotton until this war broke out, when it went to 5 cents. That is what would have happened in Texas. That is what did not happen in Texas because of this distributing system that now exists, built up entirely upon the Texas rate-making situation, and because our Texas wholesalers knew the condition in those counties; because they carried those men from the time this war opened until to-day; because to-day we are selling cotton in Texas for 14 cents that was put in storage at 5 cents and carried by the wholesalers, and, Mr. Chairman, that situation could not exist if the men who were carrying those accounts did not know the situation. Am I not correct, Mr. Senator?

Senator SHEPPARD. Yes, sir.

Mr. HAINES. Now, then, in this Shreveport case, and in the decision of the Commerce Court, and the decision as written by Mr. Justice Hughes, and the plank in the Republican platform, which calls for Federal supervision, if this is permitted to become a law, then men in Washington will make rates for a condition in Texas about which they know absolutely nothing and which it would take them years to learn.

Is that reasonable? Your laws are full of these words "reasonable" and "unreasonable," and that is the basis of your action in making the legislation. Why should it not be the basis of your action in practice as well?

Now, then, under the system that has been built up, first by the railroads and followed by the railroad commissioners of Texas, under that system we have preserved and maintained and added to an economic condition that was our salvation when the pinch came, and yet if this Shreveport case is allowed to continue as it has begun it means that the Interstate Commerce Commission is coming in and it is going to say, "We do not approve of your rate situation in Texas because it is not like what we have placed in elsewhere."

That is why I am here in favor of this amendment, because I do not want a condition disturbed in Texas, as it is bound to be disturbed, and I am making no guess on what the Interstate Commerce Commission will do—they have done it; they have said it, and a year ago it was my duty to travel from Texas to Atlantic City to find the chairman of the Interstate Commerce Commission to beg him to undo the things that they had done in the supplemental case; to beg him to undo the ten thousand or more discriminations they had created in the effort to relieve the discrimination at Shreveport.

The CHAIRMAN. I understand, then, your contention to be substantially this, that as to purely State commissions the rates for transportation should be fixed by a State administrative body; that as to the Interstate Commission the rates shall be fixed by an interstate administrative body; that the States shall settle in that way all questions of rates between the shippers and carriers?

Mr. HAINES. Within the State.

The CHAIRMAN. That the Nation, as to interstate commerce, will settle all contentions through the Interstate Commerce Commission, but that when either of these sovereigns complains of the other, of the action of the other, that when that contention arises upon the part of the State that the rate fixed by the Interstate Commerce Commission is unreasonable, or upon the part of the Nation that the State rate is unreasonable, then the contention should practically be settled by the courts?

Mr. HAINES. Yes, sir. In other words, I say, Mr. Chairman, that you know more about your neighbors and their necessities than I do, and that it is absolutely impossible for a tribunal like the Interstate Commerce Commission, with any additions that may be placed upon it by this or any other Congress, to bring about such an adjustment of affairs as would be entirely reasonable.

The CHAIRMAN. You speak here of any court of competent jurisdiction. You do not say the Federal courts. That would include, possibly, the State courts?

Mr. HAINES. No, sir. As I say, I am not a lawyer. I have, however, had a good deal of experience in these things, and I do not recall a single case where the carriers attacked the reasonableness of a State rate where the attack was brought in the State courts. I do not remember one.

Mr. BARROW. There are numerous instances in all the States. Many of our cases go to the States.

Mr. HAINES. Oh, a minor case.

Mr. BYARS. In the State of Texas that never has been.

Mr. HAINES. I was going to cite the Farmers' Loan Trust *v.* Reagan—Mr. Mayfield, do you know that citation of the Farmers' Loan against Reagan[a]

Mr. MAYFIELD. No.

Mr. HAINES. It is in one of the early Federal reports, anyway. A case of that kind would necessarily, undoubtedly, be brought in a State court, but I imagine that such Federal questions are involved as to finally bring all those questions for adjudication to the Supreme Court of the United States, and I do not think anybody is seeking to avoid that. It seems to me that is the proper place for it.

The CHAIRMAN. As I understand it your contention is as to rates between shipper and carrier simply, that is the contention as to State rates, the State commissions, the matter shall be adjusted by the local tribunal?

Mr. HAINES. Exactly.

The CHAIRMAN. As to interstate rates, the matter shall be adjusted by the Interstate Commerce Commission?

[a] The case in question will be found reported in 154 U. S. 362, 14 Sup. Ct. Rept. 1047.

Mr. HAINES. Exactly.

The CHAIRMAN. But that whenever the contest arises between sovereigns, as to the reasonableness of their exercise of the power of the one and its effect upon the matters coming within the jurisdiction of the other, that then that contention shall be settled by the courts?

Mr. HAINES. In such a way that it would determine whether or not the rates made by the State commission are, within themselves, reasonable, and so on.

Mr. FINN. Relative to the proposition in the proposed act, the language which you quoted, "a court of competent jurisdiction," I will state that as the carriers usually will be the plaintiff on the rate question they will have the right to choose the court in which this complaint is made. Of course, they can choose the State court, but nine times out of ten they introduce a Federal question and they choose the Federal court to try out the Federal question. But the carrier has the right to choose the jurisdiction generally, because it is the plaintiff.

Mr. HAINES. With your permission I will take up just a moment or two more.

Mr. MAYFIELD. You say the reasonable rate should stand, and the one that is unreasonable should yield?

Mr. HAINES. Exactly.

Mr. MAYFIELD. And the Federal courts, while they have no jurisdiction to pass on future rates they have passed on the reasonableness of rates already established?

Mr. HAINES. Exactly. Just this point occurs to me in connection with this Shreveport case. Now the Texas commission has prescribed rates. Suppose the Interstate Commerce Commission comes in and says in this Shreveport case that the rates must apply from Shreveport to points in Texas, and between points in Texas, in order to remedy this discrimination in Shreveport, and suppose they make an entirely different set of rates from what the Texas commission has made? What is going to be the result from the standpoint of the shipper, the man I represent? I will tell you. We are going to get in court right slap dab, right quick.

Mr. WALTER. Upon what theory?

Mr. HAINES. Upon the theory that the Texas-made State rates are not being followed, and in the meantime the court is going to prescribe, as it did in the Arkansas case, certain rates to be followed during the course of the litigation, then the Supreme Court of the United States is going to pass upon that condition finally. You know, perhaps, better than I how long that will take. It means at least four or five years of litigation, does it not? It means that in that period the Texas shipper is going to have to pay this scale of rates fixed by the court, and if the court should find, as the court practically always has found, that those rates needed trimming to any extent, then five years after some of this freight has been paid the court is going to say it is unreasonable and the shippers of Texas are going to have to dig up their old expense bills, are going to employ counsel, just as they did in Arkansas, to recover these amounts. What will be the result? That not three-eighths of that money will ever be returned to the shippers. And this litigation can well afford to be carried on by the carriers, because they will earn millions and millions of dollars that they will never have to refund and which the court will say they are not entitled to.

Now, then, I hope this committee will favorably report this amendment. It can not possibly injure members of the Interstate Commerce Commission; it can not possibly injure the members of the Texas Railroad Commission. They are all on a salary. But the man that it will injure, if you do not do it, is the man who is paying the freight to-day and who is carrying this load; the man who is helping in the prosperity of this country, and the man whom you ought to protect and who needs your protection.

Senator BRANDEGEE. Let me ask you this question, please, Mr. Haines. I do not pretend to be an expert on this as you are, because you have had actual, practical experience. But suppose you have got a long interstate carrier, going through many States, and this bill of Senator Sheppard's is passed. The single States through which this railroad runs prescribe rates for intrastate points, which can not be disregarded by the railroads until they have gone to a court of competent jurisdiction and had them pronounced unreasonable. In the meantime the Interstate Commerce Commission is prescribing rates between points on that same road, which happened to be in different States, but upon the same road and for practically the same distance to haul for which the different States are prescribing different rates. It seems to me offhand as though that results in inextricable confusion.

Mr. HAINES. No, sir; it will not for this reason: If this amendment becomes a law, the Interstate Commerce commission is immediately confronted with a reasonable set of rates. It has got a guide.

Senator BRANDEGEE. They have got 48 guides, 48 who are all their superiors, unless, of course, the Supreme Court sets aside those guides, unless it decides the thing is on an unreasonable basis.

Mr. HAINES. Senator, you understand there may be 48 guides, and you say you are not familiar with rate making?

Senator BRANDEGEE. Not at all in practice.

Mr. HAINES. But you know, as a matter of fact, as every intelligent man does, that it costs more to haul a train over a mountain than it does over a flat prairie, and that the rates in one State for the same distance may not properly be comparable with the rates in another State for the same distance, because conditions are different.

Senator BRANDEGEE. I can understand that all the special circumstance of each local rate and of each interstate rate would be subject to due consideration, but in the end you would have each State commission deciding the thing within the boundaries of their own States for points within their own States, and you would have the Interstate Commerce Commission fixing rates wherever the two termini lay in different States, which would be part of the route and part of the distance, and all sorts of parts of the distance for which the State had set up another standard.

Mr. HAINES. Let me answer by describing the situation respecting the Santa Fe. It runs through Kansas, Oklahoma, and Texas. The situation in Texas now, it being a big State, is different from the situation in Connecticut, or even in Oklahoma.

Senator BRANDEGEE. I understand that. I understand in Texas you have got a territory which is almost a rate problem in itself.

Mr. HAINES. It is a rate problem in itself.

Senator BRANDEGEE. A large part of it has nothing to do with interstate commerce in other States?

Mr. HAINES. Not at all. Yet, just in the State of Texas, we have to adjust those rates in a different way from that in which they are adjusted in Oklahoma. I am going to tell you this, that if this shipment moves from a point 50 miles north of the Oklahoma-Kansas line to a point 50 miles south of the Texas-Oklahoma line, and the rate from that point in Kansas to the Kansas border, plus the local rates from the Kansas border to the Texas border, plus the local rates from Texas border to destination, of those three locals, each based upon a condition in the State, make a lesser rate than any through rate that the Interstate Commerce Commission might make, then I should say that that would be the rate to be applied by the Interstate Commerce Commission, and the Interstate Commerce Commission would have no difficulty in determining its reasonableness. But it is a rule in rate making that the greater the distance traversed the lesser the cost per mile, and the Interstate Commerce Commission would probably find that any through rate that might be made on that basis which contemplated two, four, six terminal expenses, could properly be reduced for a through haul, and it is my experience, and I think you will find it a universal one, that in a case of that kind the Interstate Commerce Commission would make a lesser rate and would prescribe a lesser rate from those points in Kansas to this point in Texas than the combination of the three locals, and that would be the solution of the problem.

Senator BRANDEGEE. They make the three locals, and on the other hand, if your theory is correct, that the State commissions would make the reasonable rate, you would have your conflicts all the time just the same?

Mr. HAINES. No, sir; because under that rule, and it would necessarily have to be adopted by the Interstate Commerce Commission, the sums of the locals would apply where it were less than the through rate, might be applicable under ordinary circumstances.

Senator BRANDEGEE. Of course if the Interstate Commerce Commission will apply and abide by the rule, why every time they have got to concede the right to the State, that puts it out of business.

Mr. HAINES. No, sir; not by any means, because there is always this question of the through rate on long hauls that can not possibly be affected by any combination of locals.

Senator BRANDEGEE. It puts them out of a portion of that business?

Mr. HAINES. Oh, certainly; and I contend it is a portion of the business they ought not contemplate handling. Let me give you an example. The rate on bagging from Galveston to common points in Texas is now 21 cents. That would apply to Waco from Galveston, and would apply from Galveston to Amarillo, yet the stuff that bagging is made of, jute butts, is handled from Galveston to St. Louis, an interstate proposition, for 6 cents a hundred pounds.

Mr. BRENT. How much? Oh, no.

Mr. HAINES. Oh, yes. You live in New Orleans in a hole in the river and do not know what is going on. I know what I am talking about.

Senator BRANDEGEE. You know that we do not know, anyway.

Mr. HAINES. Well, I might try, Senator, to put something over you that I might not try to put over everybody. The railroads made that arrangement, and admitted it before the Texas commission, so that they could get a haul on the bagging out of St. Louis manufactured out of these jute butts. It was a question of policy with them.

Mr. FINN. I should like to make this statement.

Senator SHEPPARD. We have just one more gentleman to speak. He is Mr. Hamlin Palmer.

The CHAIRMAN. You may proceed.

STATEMENT OF MR. HAMLIN PALMER, AMARILLO, TEX.

Senator SHEPPARD. Mr. Palmer, you may state your name and business connections to the committee.

Mr. PALMER. I am a traffic man, employed by the board of city development at Amarillo. That board of city development is composed of 15 men, appointed by the city commission. Those 15 men are the heads of the various committees; one of them is the traffic committee, another the agricultural committee, another the publicity, and so on. Those heads of committees have other citizens appointed as members of their committees, so that we use a great many business men in the town in the work of the board.

I represent that body of men, and have been sent here to Washington for the purpose of urging the passage of this bill. I represent the business men in Amarillo, the financial men of Amarillo, and the agricultural interests in the surrounding country, because I know their sentiments along that line.

We look upon the Railroad Commission of Texas as the greatest force in the country for the development of the country, and we want to see its powers preserved.

There are a great many things that I had in mind to say in regard to rate making and the forces that were at war in that matter, but that has been entirely covered.

The purpose for which I have been sent here to-day is to present to you the opinions and desires in the matter of this hearing of an organized body of business men duly authorized to represent the commercial and industrial interests of the city of Amarillo, Tex. (population 18,000), and by reason of universal opinion qualified to speak for the entire citizenship of the Great Panhandle and Plains Country of Texas, comprising an area of 40,000 square miles, with a population of more than 200,000.

Natural conditions more than State lines have determined the name and the peculiar conditions which have distinguished this territory. Made known first to the world as the desert of the "Great Staked Plains," later famous as the location of the greatest cattle ranges of the world, it has now become recognized as the most favorable stock farming region in the Southwest, immigration is fast converting its vast expanse into one great farm, and its commercial importance has grown magically into giant form in one night. These are the conditions that give us warrant for joining in the voice of our great State in protest against encroachment and in asking for protection of those institutions which have made us great and prosperous.

We are not concerned in this instance with the efficacy of any political principle, but in the methods of conducting one of the great branches of the business of the country which has directly to do with the success of practically every other branch of business. Transportation in the great arteries of commerce between the States regulated by the interstate commerce act is amply provided for in its control by the Interstate Commerce Commission; but in the remote extremities of trade, where the great pulsating central force has long since expired, local vital forces control the final circulation, maintaining the health and strength of the ultimate units of business which constitute the commercial and industrial entity of the nation. In the regulation of these remote forces are to be found the natural reasons for the establishment of the ganglionic centers constituted in the State railroad and corporation commissions, and through them there is returned to the great central control a constant renewal of the constitutional vitality that animates the whole.

The Texas Railroad Commission was in existence as an active and efficient body long before the Interstate Commerce Commission had developed its present adequacy of control and regulation. It had corrected hundreds of discriminations and abuses in the transportation methods of the carriers and had eliminated them from practice within the State for years while these same practices were going on in interstate traffic, although now removed. It was formulating many methods in the regulation of transportation and practices in procedure which have since been adopted in interstate regulation. It fought out all the original battles with the corporations and established many precedents which have gained universal recognition. In the beginning, shortly after its establishment, its constitutionality was attacked by the railroads, but in the end it was recognized by a decision of the Supreme Court as a constitutional entity lawfully established and with lawful powers; and it is for the preservation of this lawfully constituted body and its lawful powers that we are now asking your favorable consideration.

During the life of the Railroad Commission of Texas the State has grown in population from about 2,000,000 to over 4,000,000, and in all its vast expanse of 265,900 square miles its development in all lines of industry and commerce has largely and continuously advanced, spreading out from its centers to the remotest corners of its territories. In this development the commission has been one of the most important factors, and because this development is but just begun the preservation of the functions of the commission is of paramount interest. The commission is a controlling and regulating body accessible to individuals and communities, where conflicting interests may be reconciled and local needs receive attention, and such an immediately accessible regulating body only can grant or impose the conditions under which any locality, community, section, territory, or other unit of the commercial life of the country may proceed uniformly, equitably, justly, and speedily to the accomplishment of its manifest destiny of prosperity. The history of the Railroad Commission of Texas has exemplified this completely. It has protected the people from the exactions and encroachments of corporations and placed them in position to retain for themselves a just share of the fruits of their industry, and while the railroads still hold over us the recourse to injunction and the processes of the courts, they can yet be made to admit that the offices of the commission have in a great measure saved them from themselves in the abolition of ruinous competition and from usages and practices that were a drain upon them and put their business on a permanent and profitable basis. If they should claim that the actions of the railroad commission have always been hostile to the railroads, there is ample testimony to the fact that the commission has universally recognized the theories evolved by the lines themselves in the construction of freight rates and the practices in the handling of traffic established by the carriers, and within the last year they have been granted substantial increases in almost all schedules of rates, with practically unanimous consent of the people.

If the determination of rates of freight rested upon a theory based upon so much per ton per mile, this function of a State commission might become of little local importance and rate making might be relegated solely to the carriers under a general statute, and there would be little use for either State commissions or an interstate commission; but the numerous elemental considerations which have been recognized by both State and interstate commissions and by the statutes should cause any legislative body to consider long and carefully the practicability of placing this function in the hands of one central body simply on the plea of uniformity and with only the remotest possibility of such result being obtained. The tendency of the operations of the Interstate Commerce Commission and of the decisions of the Supreme Court in this direction has been the occasion of this bill which you are considering, and, as we understand it, its object is to make plain and specific the general understanding of the people as to the functions of the Interstate Commerce Commission. It is for you to decide whether the manifest desire of the people as to the jurisdiction of the Interstate Commerce Commission shall be continued or whether it shall go the way of many other salutary measures to execution by mere inference or interpretation.

We favor this bill because we believe in the preservation of the powers and functions of our Railroad Commission, which has built up our country wisely, and therefore permanently, and has imparted health and stability to our transportation and commercial interests, with due and just regard for every corporation, individual, and community, and because more than any other force it has contributed to the development of our State and its resources.

In presenting this statement to you I do so as the authorized representative of the board of city development, which organization is empowered to speak for all the varied business interests of the city of Amarillo, and in this instance is the mouthpiece of the commercial, financial, agricultural, and industrial interests of the entire Panhandle district of the State of Texas, and this is their prayer and petition.

The CHAIRMAN. We will take up the other side this evening.

(Thereupon at 5.30 o'clock p. m. a recess was taken until 8 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 8 o'clock p. m., pursuant to the taking of the recess.

The CHAIRMAN. The committee will now come to order. We will now hear Mr. Barrow.

STATEMENT OF MR. W. M. BARROW, ASSISTANT ATTORNEY GENERAL OF LOUISIANA.

Mr. BARROW. Mr. Chairman and gentlemen of the committee, I desire to present, before discussing this measure, the resolution adopted by the General Assembly of the State of Louisiana, now in session, which opposed the Sheppard bill, also a similar resolution adopted by the Railroad Commission of Louisiana, and a resolution adopted by the Board of Governors of the New Orleans Joint Traffic Bureau. These resolutions are all somewhat similar in their nature and oppose the Sheppard bill on the ground that it will nullify the decision in the Shreveport Rate case.

The CHAIRMAN. The resolutions will be printed.

(The resolution of the General Assembly of Louisiana above referred to is here printed in full, as follows:)

[Smith resolution.]

Whereas there is now pending in the Senate of the United States a bill introduced by Senator Morris Sheppard which has for its object and purpose the nullification of the law as declared in the now famous Shreveport Rate case; and

Whereas the General Assembly of Louisiana by resolution and appropriations made for the purpose had the suit brought that wiped away the rate barrier erected by the State of Texas against Louisiana commerce at the State line; and

Whereas the future prosperity of a large part of the population of Louisiana, together with the welfare of the cities of New Orleans, Shreveport, Monroe, and Alexandria, are indissolubly linked with the matter of freight rates; and

Whereas if the Sheppard bill now pending in the United States Congress should be enacted into law, the effect of the rate fight already won would be nullified: Therefore be it

Resolved by the Senate, the House of Representatives concurring, That the General Assembly of Louisiana earnestly urge its United States Senators and Representatives in Congress to vigorously oppose the passage of Senate bill 5242, introduced by Senator Morris Sheppard and now pending before the Committee on Interstate Commerce, and that copies of this resolution be forthwith forwarded to the Louisiana Senators and Congressmen upon the passage of this resolution.

(The resolution of the Railroad Commission of Louisiana above referred to is here printed in full, as follows:)

Whereas Senator Morris Sheppard has introduced in the United States Senate a bill which is intended to nullify the interstate commerce law as expounded and defined in the decisions of the Interstate-Commerce Commission and the Supreme Court of the United States in the Shreveport Rate case; and

Whereas the State of Louisiana has, through this commission, brought the suits before the Interstate Commerce Commission and made liberal appropriations for the purpose of eliminating the unjust discriminations against Louisiana shippers by the intrastate rates of the State of Texas, established by the Railroad Commission of Texas, and sought to be perpetuated by the Sheppard bill; and

Whereas the welfare and prosperity of many of the people of Louisiana, and the growth of the commerce of all the principal cities of this State, are largely dependent upon the interchange of commodities with the people of other States upon fair and equal rates and practices by the carriers of interstate commerce; and

Whereas the Interstate Commerce Commission is the only existing forum of relief against oppression and wrong growing out of discriminations in rates and practices against interstate commerce, and affords to all interests a fair and impartial hearing in its investigations; and

Whereas the decisions in the Shreveport Rate case are in the interest of the public and the commerce of the people of the United States, and if such decisions were nullified by the passage of the Sheppard bill the result would be a return to the intolerable conditions which restricted and impeded commerce between Louisiana and Texas, and between other States: Therefore, be it

Resolved, That the Railroad Commission of Louisiana, on behalf of the shippers and carriers of the State of Louisiana, unqualifiedly oppose the passage of the bill of Senator Morris Sheppard to amend the act to regulate commerce by providing "That nothing in this act, nor in the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate, rule, regulation, or practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage, or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory as aforesaid, unless and until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate, rule, regulation, or practice imposed as aforesaid, to be reasonable;" be it further

Resolved, That the United States Senators and Representatives from the State of Louisiana be urged to use their most earnest efforts to defeat Senate bill 5242, by Senator Sheppard, and that copies of this resolution be forwarded to each of the Senators and to the Members of Congress from Louisiana and a copy filed with the committee having the bill in charge; be it further

Resolved, That the assistant attorney general, W. M. Barrow, having charge of the rate litigation for the State of Louisiana, be and he is requested to appear before the Senate committee at such time as may be arranged and present the views of this commission against the Sheppard bill.

I, Henry Jastremski, secretary of the Railroad Commission of Louisiana, do hereby certify that the above and foregoing pages, one to three, inclusive, contain a true and correct copy of a resolution opposing Senate bill 5242, adopted by the Railroad Commission of Louisiana, in session at Baton Rouge, on the 21st day of June, A. D. 1916.

In testimony whereof I have affixed my signature and the seal of the Railroad Commission of Louisiana this 22d day of June, A. D. 1916.

[SEAL] HENRY JASTREMSKI,
Secretary.

(The resolution of the New Orleans Joint Traffic Bureau above referred to is here printed in full, as follows:)

[Adopted June 22, 1916.]

Whereas Senate bill 5242, introduced in the United States Senate by Senator Morris Sheppard, has as its apparent aim the nullifying of the principles announced in the decision of the Supreme Court of the United States, upholding the decision of the Interstate Commerce Commission in the proceeding known as the Shreveport rate case; and

Whereas in the interest of the commercial welfare of the people and the principal cities of Louisiana, the honorable Railroad Commission of Louisiana has prosecuted suits before the Interstate Commerce Commission and the courts with the view of removing the unjust discriminations against Louisiana shippers due to the existence of the favorable intrastate rates in Texas, prescribed by the Texas Railroad Commission and preventing the free exchange of commodities by our shippers with people of the State of Texas, which adjustment is sought to be restored by the Sheppard bill; and

Whereas the Interstate Commerce Commission is the only properly constituted source of relief from discriminating adjustments and practices against interstate commerce; and

Whereas the nullifying of the decisions in the Shreveport Rate case, which are in the interest of the public and the commerce of the people of the United States, by the enactment into law of this Sheppard bill, would be a serious blow to the freedom of commerce of the people of our State shipping into Texas, and in like manner to shipments between other States: Therefore be it

Resolved, That the New Orleans Joint Traffic Bureau, maintained jointly by the New Orleans Board of Trade (Ltd.), New Orleans Cotton Exchange, the New Orleans

Association of Commerce, and the Board of Commissioners of the Port of New Orleans, and having for its particular purpose the correction and prevention of unjust and discriminatory freight rates to, from, and through the port of New Orleans, place itself on record as being vigorously opposed to the passage of Senate bill 5242: Be it further

Resolved, That this bureau request our Louisiana Senators and Representatives to do all in their power to defeat this bill, and that copy of this resolution be directed to our Senators and Representatives: Be it further

Resolved, That Mr. Theodore Brent, the general manager of our bureau, appear before the Senate committee having this bill in charge, at its hearing on June 30, and present the objections of our commercial interests to its adoption.

Mr. BARROW. I was present at the meeting of the National Railroad Association in 1914 when Commissioner Williams, of Texas, introduced a resolution which is the Sheppard bill verbatim. That resolution was the subject of considerable discussion to representatives of the various States, and I had the honor of taking part in that meeting in the discussion of presenting the views of the people of Louisiana who had just then won the victory in the Shreveport Rate case. There were present at the 10 days' session 134 representatives of the various State railroad commissions. When the resolution was voted on there were 34 members of these various State commissions present and the resolution was adopted by a majority of 11. So that it can not be stated that the resolution as it now appears in the form of the Sheppard bill is an expression from the various State railroad commissions or from the shippers of the United States through those State railroad commissions, of their views upon the amendment to the act to regulate commerce.

I make this statement because it appears upon the record from the statements made this morning by those who argued in favor of this bill that it had received consideration by the entire Association of Railroad Commissioners and that it had been passed by a vote which would indicate, to some extent at least, that it had received the approval of all of the State railroad commissions or at least a great majority of the State railroad commissions of the United States. Some of the railroad commissions that opposed the adoption of the Williams resolution were the Kansas Public Utilities Commission—and there were two members of that commission present—the Minnesota Railroad and Warehouse Commission, the Nebraska State Railway Commission, the New Hampshire Public Service Commission, the North Carolina Corporation Commission, the Public Service Commission of the Commonwealth of Pennsylvania, the Railroad Commission of Wisconsin, and the Railroad Commission of Louisiana, and among those commissions which I have mentioned will be at once recognized some of the strongest State railway commissions.

Now, if the committee please, when the Williams[1] resolution was adopted by the National Association of Railroad Commissions, it gave some concern to the people in the southern section of the United States and became the subject of a good deal of discussion after the meeting in Washington adjourned. It was considered the beginning of a fight in Congress to have the act to regulate commerce amended so that the Shreveport Rate case decision might be nullified, and it has been accepted all along that sooner or later, having gained the decision from the Supreme Court of the United States,

[1] Commissioner William D. Williams, member of the Railroad Commission of Texas, introduced a resolution at the meeting of the National Association of Railway Commissioners, at Washington, D. C., in November, 1914, of which the Sheppard bill is a verbatim copy. W. M. B.

it would be necessary for those who had made this fight for their rights to place before a committee of Congress the same facts and same arguments which had been made on previous occasions before the Interstate Commerce Commission and before the courts.

So that in placing before your committee the facts and arguments which we must bring to your attention, we are placing before you precisely the same facts and arguments upon which the record in the Shreveport Rate case was made and upon which the decisions in favor of the commission in the Supreme Court were rendered.

In about 1910 the conditions had become so very disastrous, so far as the commissions of Shreveport and eastern and western Louisiana were concerned, that some action became absolutely necessary. There was considerable discussion among lawyers in the State of Louisiana as to just what forum would afford the relief that was necessary to overcome that discrimination which had become intolerable. Texas had avowedly established rates which favored its own jobbing cities. Those rates, according to the reports of the Texas commission, had been put in for the purpose of overcoming certain advantages which existed in interstate rates, or in giving to the jobbers of the State of Texas advantages over interstate shipments. Those advantages were secured by the adoption and the publication and establishment of mileage and commodity rates in the State of Texas which were lower than any rates which existed from interstate points, and under an act of the Legislature of the State of Texas this commission had the power upon very short notice, and practically without hearing, to establish what they called emergency rates, so that if a carrier operating from St. Louis or Memphis or Shreveport, or any other of the States serving Texas reduced its interstate rates to any of the Texas territory, immediately, upon this information reaching the Texas commission, an emergency rate was established by this commission which kept the relationship between those rates as they were before the interstate rate was reduced, so that there was no method by which the relief could be obtained by the Shreveport shippers who were suffering loss of their commerce throughout that time from eastern Texas. It was at first thought that relief might be obtained by bringing suit directly in the Federal courts against the Texas carriers who were complying with the orders of the Texas railroad commission and thereby have the orders of the Texas commission set aside by order of the courts. Upon a thorough study of this possible solution of the vexed question it was considered by all of the lawyers who examined it as an impossible result, that no action which they might bring in any court would give the relief that was sought. It was then determined that the only forum in which the relief sought could be found was the Interstate Commerce Commission, and a suit was prepared and filed with the Interstate Commerce Commission attacking as unreasonable, discriminatory, and otherwise unjust the rates which the carriers were applying on interstate commerce from Shreveport into Texas and likewise from Texas points into Shreveport.

Now, I will not attempt to go into the details of what took place after this suit was filed because we have here Mr. Walter, who was employed by the State of Louisiana as special counsel and who handled this case from the outset, and who is still actively in charge of the proceedings before the Interstate Commerce Commission. I will appropriate the time that is given me to relate to you briefly the

first of these cases, so that it may be in the minds of the committee when they come to a discussion of the legal aspects of the bill.

After this proceeding was filed before the Interstate Commerce Commission, in the usual course of its business, notices were sent to all of the defendant carriers, and it was requested by the attorneys in the case that the Texas Railroad Commission be given notice of the proceeding and asked to enter an appearance and make a defense of their rates, or make such explanation as they might see fit. This notice on the part of the attorneys in the case was ignored by the Texas commission. The Interstate Commerce Commission, upon application to them to notify the Texas commission, refused to do so, saying that they had no jurisdiction, and rightly so, over the Texas Railroad Commission, and could not call them into a case of this character; that their appearance, if made at all, must be voluntary.

So that the case proceeded to trial without any appearance from any one connected with the Texas commission, with the result that the carriers in their answer filed with the commission, seizing perhaps the opportunity to overcome what they considered in Texas low rates, replied that their rates were unreasonable, admitted the discriminations alleged, and asked the commission that they be allowed to advance their rates in Texas. The Interstate Commerce Commission, as a test case, established rates after these hearings on three of the lines operating between Shreveport and Texas points, selecting only class rates, and establishing them only for limited distances, and upon the record as made up and upon this order the carriers appealed to the Commerce Court, then in existence. The Railroad Commission of Louisiana intervened and the Commerce Court sustained the decision, the majority decision of the Interstate Commerce Commission holding——

Mr. MORGAN. You said limited. You mean only established rates to the districts complained of?

Mr. BARROW. Yes; but that was limited. The distance did not cover the entire State of Texas; it ran out at about 240 or 250 miles and beyond that the rates as fixed by the Texas Railroad Commission remained undisturbed because in the complaint which was originally filed the Louisiana Railroad Commission had only asked that the Shreveport rates be fixed to a certain distance westward.

The case was, as I say, decided by the Commerce Court in favor of the Railroad Commission of Louisiana, and the decision of the Interstate Commerce Commission sustained on an appeal to the Supreme Court of the United States. (234 U. S., 342.) Every contention which was made by the Railroad Commission of Louisiana in that case was affirmed by the Supreme Court of the United States; and it was held in the Shreveport case, which has now become one of the history-making decisions of our jurisprudence, that where there was discrimination existing between interstate and intrastate rates, where the carriers of interstate commerce were using their lines in such way as to create a discrimination against intrastate shipments, that there was but one existing forum where that discrimination could be cured, and that forum was the Interstate Commerce Commission, and that its action in the Shreveport rate case had been proper in accordance with authority vested in it by Congress, and that Congress had full authority to vest this authority in the Interstate Commerce Commission. But there was no forum except the Interstate Commerce Commission where this redress could be obtained, and the States themselves were powerless to wipe out any such discrimination as was found in the Shreveport rate case.

Then came the filing of a supplemental petition which broadened the case so as to take in other lines. Then came the filing of a new complaint, which took in the entire State for reasons which are apparent and may be briefly explained—that the moving of the line westward to the line of the Brazos and Trinity Rivers simply established another line of discrimination, that line being in the middle of Texas. That in order to get the relief which was sought it was necessary for the order of the Interstate Commerce Commission to be broad enough to cover all of the discriminations in the State of Texas and go beyond this line which was established by the Interstate Commerce Commission in its original order; and the case which is now pending before the Interstate Commerce Commission is the one which covers the entire State of Texas and asks that the discriminations which existed against Shreveport be removed and that the rates be so adjusted that there shall be no discrimination in rates for the same distance for the same commodities between Shreveport and points in the State of Texas.

Now, that is the history of the case up to the present time.

Senator CUMMINS. Will you state again the substance of the original order or decision of the Interstate Commerce Commission?

Mr. BARROW. Yes, sir. The substance of the original order of the commission was that three lines be selected as test lines, and upon these three lines the Interstate Commerce Commission established certain rates on classes for certain distances, the distances being from 1 to about 250 miles, out to about that distance. Those rates were made the same from Shreveport to Texas as they were from Texas to Shreveport, so that the rate which applies for the same distance on the same commodity, on the same roads, applied to the same distance on the same commodity in either direction.

Senator CUMMINS. How did that affect the order of the Texas commission?

Mr. BARROW. It required in some cases advances to be made in Texas rates. It required reductions to be made in the rates from Shreveport.

Senator CUMMINS. A reduction in the interstate rate or increase of the State rate?

Mr. BARROW. It required reductions in the interstate rates and increases in the intrastate rates of Texas.

Senator CUMMINS. Both.

Mr. BARROW. Now, of course, it does not mean that every rate was increased. There were cases where the rates were not increased in Texas, but it may be said generally that there were increases in the intrastate rates, and reductions in the rates from Shreveport.

Mr. MORGAN. I would like to correct your statement. You stated that the class rates were the only rates that were involved.

Mr. BARROW. No, I beg your pardon; I said the original order on class rates were the only ones fixed by the commission.

Mr. MORGAN. Then, was the commodity rates changed at the same time?

Mr. BARROW. Not in the original order.

Mr. MORGAN. Were they not changed in the original order?

Mr. BARROW. No.

Mr. MORGAN. I beg your pardon. They are in effect now. That is the schedule I filed to-day with the committee.

Mr. BARROW. That was a subsequent order.

Mr. MORGAN. I beg your pardon; it was the original order.

Mr. BARROW. The record will show that the order fixed class rates, and class rates only.

Mr. MORGAN. And the Supreme Court of the United States decided that rail-carrying lines did have the right and could make those commodity rates.

Mr. BARROW. They required them to be equalized, but did not fix a scale on anything but class rates. They said that where the rates were different on commodities from Shreveport to points in Texas than from Texas points eastward, that those rates should be fixed, but they did not fix rates. They did establish class rates. The Texas scale of class rates was made applicable the same from Shreveport into Texas as they were from Dallas toward Shreveport.

Mr. HAINES. By that you mean the Interstate Commerce Commission established the same class rates as were in effect in Texas, established by the Texas commission for like distance?

Mr. BARROW. Yes, from Shreveport into Texas.

Mr. HAINES. It was the Texas scale, in other words.

Mr. BARROW. It was the Texas scale subject to the western classification. There was a change there. Texas had adopted its own State classification. They created many discriminations, giving a lower minimum in many cases than applied in the interstate classification, which was the western classification. So that the Interstate Commerce Commission in adopting the Texas scale of rates to apply from Shreveport westward on these lines also adopted the western classification for the State of Texas and for interstate shipments. So that the whole thing was equalized by this order. That was the result of the order; it made the rates the same for the same distance whether they moved from Shreveport into Texas or from Dallas toward Shreveport over the same railroads.

Mr. HAINES. And under that order the people of Texas had no opportunity whatever to express to the Interstate Commerce Commission their views on the question of classification.

Mr. BARROW. Oh, yes; Mr. Haines, you are quite mistaken about that. The people of the State of Texas were most positively given every opportunity, as they have been in every case, and as they could not be denied, to intervene and present any evidence they might desire. The widest publicity was given to the Shreveport rate case; in fact, wider publicity than was given to any case ever heard by the Interstate Commerce Commission, from Maine to California.

Mr. HAINES. That is true, so far as opportunity is concerned, but they did not do it.

Mr. BARROW. They did not do it.

Mr. BRENT. And that they were informed is shown by the fact that Mr. Haines was there in person.

Mr. HAINES. I beg your pardon; I merely filed an appearance but never asked a question.

Mr. BARROW. The record was made up and publicity was given to it; notice was sent to the people of Texas and the people of Texas knew about the Shreveport rate case as they do to-day.

Mr. HAINES. You do not mean to say that the hearing of the Shreveport case was in any sense of the word an adequate opportunity, as it terminated, to the people of Texas to present their reasons for Texas classification?

Mr. BARROW. I mean to say this, that the people of Texas slept on their rights in the Shreveport rate case. They had every opportunity to come into this record and present their case before the Interstate Commerce Commission, but they did not do so.

Senator CUMMINS. That is not the question that I asked; that may transpire later. What I want to get clear in my mind is what rates in Texas were changed—what Texas rates were changed?

Mr. BARROW. In the original proceeding, Senator, in the first order of the Interstate Commerce Commission no Texas rates were changed. The Texas class rates were adopted to apply from Shreveport into Texas. There were no changes of Texas rates in that case. The changes came in a subsequent order of the commission, in a supplementary petition filed when the commodity rates were published, which increased Texas rates and decreased the rates from Shreveport into Texas.

Senator CUMMINS. That has not been before the Supreme Court of the United States, has it?

Mr. BARROW. That order has not been before the Supreme Court but is the result of this decision of the Supreme Court. The commission——

Senator CUMMINS. Just a moment. Then was the original order changed on Texas classification?

Mr. BARROW. Yes, sir; the original order was changed on Texas classification.

Senator CUMMINS. And did that change in classification change the rates in Texas on any commodity?

Mr. BARROW. It may have changed the rates on some commodities by requiring a greater carload minimum. For instance, there might have been 20,000 pounds minimum, and this western classification may have changed that to 30,000.

Senator CUMMINS. Whatever may have been the details they did change the rates that were required to be paid in Texas.

Mr. BARROW. In so far as the minimum of classification was concerned they did change the rates.

Mr. MORGAN. For the benefit of the record, while you are asking these questions, I would like Mr. Barrow to state what supplementary order of the commission put in commodity rates that I referred to.

Mr. BARROW. That order of the commission was in the form of an order permitting the carriers to file their tariffs——

Mr. MORGAN. Was that in the original order?

Mr. BARROW. Yes, sir. To remove this discrimination the carriers were permitted to name their tariffs, naming commodity rates from Shreveport into Texas, which commodity tariffs advanced the commodity rates in Texas and which tariffs were suspended by order of the Interstate Commerce Commission, and are still under suspension.

Mr. MORGAN. I beg your pardon; that was not in the original order.

Mr. BARROW. It was under the original order that these tariffs were filed with the Interstate Commerce Commission.

Senator CUMMINS. I think that may be settled if you will file the order with this committee.

Mr. BARROW. Oh, yes. I can file it.

(The orders of the commission referred to are here printed in full.)

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of March, A. D. 1912. Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, commissioners.

No. 3918.

J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the railroad Commission of Louisiana, *v.* St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Burrs Ferry, Browndel & Chester Railway Company; Eastern Texas Railroad Company; The Texas & Pacific Railway Company; Gulf, Colorado & Santa Fe Railway Company; Houston & Shreveport Railroad Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; The Missouri, Kansas & Texas Railway Company of Texas; Texarkana & Fort Smith Railway Company; the Kansas City Southern Railway Company; The Texas & Gulf Railway Company; Marshall & East Texas Railway Company; Timpson & Henderson Railway Company; Shreveport, Houston & Gulf Railroad Company; Texas Southeastern Railroad Company; Caro Northern Railway Company; The Nacogdoches & Southeastern Railroad Company; International & Great Northern Railroad Company, and Thomas J. Freeman, receiver thereof; Groveton, Lufkin & Northern Railway Company; Moscow, Camden & San Augustine Railway; Jefferson & Northwestern Railway Company; The Gulf & Interstate Railway Company of Texas; The Galveston, Harrrisbug & San Antonio Railway Company; Galveston, Houston & Henderson Railroad Company; The Trinity & Brazos Valley Railway Company, and Texas State Railroad.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That defendants The Texas & Pacific Railway Company, The Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas hereinafter mentioned on their respective lines, as the commission in said report finds such rates to be unjust and unreasonable.

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, classs rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the commission in its report to be reasonable, to wit:

On the Texas & Pacific Railway.

From Shreveport, La., to—	Class rates in cents per 100 pounds.								
	1	2	3	4	5	A	B	C	D	E
Wascom, Tex	18	16	14	12	10	11	9	7	6	5
Jonesville, Tex	19	17	15	13	11	12	10	8	7	6
Scottsville, Tex	22	20	18	16	14	15	13	10	8	7
Marshall, Tex	24	22	20	18	16	17	14	11	9	7
Hallsville, Tex	29	27	25	23	19	20	17	14	12	9
Longview, Tex	32	29	27	25	20	21	18	15	13	10
Willow Springs, Tex	34	31	29	27	21	22	19	16	13	10
Camps, Tex	35	32	30	28	22	23	20	17	14	11
Gladewater, Tex	37	34	32	30	23	24	21	18	14	11
Big Sandy, Tex	40	37	35	32	24	25	22	19	15	12
Hawkins, Tex	42	39	36	33	25	26	23	20	16	13
Crow, Tex	44	41	38	35	26	27	24	21	16	13
Mineola, Tex	48	45	41	39	28	29	26	23	17	14
Grand Saline, Tex	52	48	44	42	30	31	28	25	18	15
Edgewood, Tex	54	50	45	43	31	32	29	26	19	16
Wills Point, Tex	56	52	47	45	32	33	30	26	19	16
Elmo, Tex	58	54	49	47	33	34	31	27	19	16
Terrell, Tex	60	56	51	49	34	35	32	28	20	16
Lawrence, Tex	61	56	51	49	35	36	33	28	20	16
Forney, Tex	63	58	52	50	36	37	34	29	20	16
Mesquite, Tex	65	60	54	52	37	38	35	29	21	16
Orphans Home, Tex	66	61	55	53	37	38	35	30	21	16

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to establish and put in force, on or before the 1st of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the Commission in its report to be reasonable, to wit:

On the Houston, East & West Texas Railway.

From Shreveport, La., to—	Class rates in cents per 100 pounds.								
	1	2	3	4	5	A	B	C	D	E
Joaquin, Tex	25	23	21	19	17	18	15	12	10	8
Teneha, Tex	29	27	25	23	19	20	17	14	12	9
Timpson, Tex	32	29	27	25	20	21	18	15	13	10
Garrison, Tex	35	32	30	28	22	23	20	17	14	11
Appleby, Tex	38	35	33	30	23	24	21	18	14	11
Nacogdoches, Tex	41	38	35	32	25	26	23	20	16	13
Angelina, Tex	45	42	39	36	27	28	25	22	17	14
Lufkin, Tex	48	45	41	39	28	29	26	23	17	14
Renova, Tex	52	48	44	42	30	31	28	25	18	15
Corrigan, Tex	55	51	46	44	32	33	30	26	19	16
Moscow, Tex	56	52	47	45	32	33	30	26	19	16
Valda, Tex	57	53	48	46	33	34	31	27	19	16
Leggett, Tex	58	54	49	47	33	34	31	27	19	16
Livingston, Tex	60	56	51	49	34	35	32	28	20	16
Goodrich, Tex	62	57	51	49	35	36	33	28	20	16
Shepherd, Tex	64	59	53	51	36	37	34	29	21	16
Cleveland, Tex	67	62	56	54	38	39	36	30	21	16
Midline, Tex	69	64	58	56	39	40	37	31	22	17
New Caney, Tex	71	65	58	56	40	41	37	31	22	17
Pauli, Tex	72	66	59	57	40	41	38	32	22	17
Humble, Tex	73	67	59	57	41	42	38	32	22	17
Houston, Tex	77	70	60	58	43	44	39	33	23	17

It is further ordered, That defendant The Texas & Pacific Railway Company be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Dallas, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

It is further ordered, That defendants The Houston, East & West Texas Railway Company and Houston & Shreveport Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport, La., to Houston, Tex., and points on its line intermediate thereto, than are contemporaneously exacted for the transportation of such article from Houston, Tex., toward said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

And it is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the State of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants.

SUPPLEMENTAL ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 17th day of June, A. D. 1915.

No. 3918.

J. J. Meredith, Shelby Taylor, and Henry B. Schreiber, constituting the Railroad Commission of Louisiana, *v.* St. Louis Southwestern Railway Company; Texas State Railroad; the Caro Northern Railway Company; Nacogdoches & Southeastern Railroad Company; Jefferson & Northwestern Railway Company; Gulf, Colorado & Santa Fe Railway Company; the Missouri, Kansas & Texas Railway Company of Texas; Texarkana & Fort Smith Railway Company; the Kansas City Southern Railway Company; Moscow, Camden & San Augustine Railway Company; St. Louis Southwestern Railway Company of Texas; Eastern Texas Railroad Company; J. W. Robins, receiver the Trinity & Brazos Valley Railway Company; Shreveport, Houston & Gulf Railroad Company; Houston & Shreveport Railroad Company; the Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Burr's Ferry, Browndel & Chester Railway Company; Groveton, Lufkin & Northern Railway Company; the Galveston, Harrisburg & San Antonio Railway Company; the Galveston, Houston & Henderson Railway Company; the Timpson & Henderson Railway Company; the Texas & Pacific Railway Company; Marshall & East Texas Railway Company; James A. Baker, receiver International & Great Northern Railway Company; Cecil A. Lyon, receiver International & Great Northern Railway Company; Texas Southeastern Railroad Company; Houston & Texas Central Railroad Company; Texas Midland Railroad; and San Antonio & Aransas Pass Railway Company.

This case being before us upon petition for supplemental order, and order to show cause why the same should not issue, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving their present class rates for the transportation of traffic from Shreveport, La., to points in eastern Texas, as defined in said report, or from points in eastern Texas as there defined toward said Shreveport, which rates are found in said report to be unjust and unreasonable to the extent that they exceed those hereinafter prescribed as maxima.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of traffic from Shreveport, La., to points in said eastern Texas, and from points in said eastern Texas toward said Shreveport, class rates which shall not exceed the following in cents per 100 pounds, found in said report to be reasonable, to wit:

Rates in cents per 100 pounds for single-line application. By "single line" is meant one line of railroad or two or more lines of railroad under the same management and control.

Distances (in miles).	1	2	3	4	5	A	B	C	D	E
10 and less	13	12	10	8	6	7	6	5	5	4
12 and over 10	14	12	11	9	6	7	6	5	5	4
15 and over 12	15	13	12	10	7	8	6	5	5	4
18 and over 15	16	14	12	10	8	9	7	6	5	5
21 and over 18	17	15	13	11	9	10	8	6	6	5
24 and over 21	18	16	14	12	10	11	9	7	6	5
27 and over 24	19	17	15	13	11	12	10	8	7	6
30 and over 27	20	18	16	14	12	13	11	9	7	6
33 and over 30	21	19	17	15	13	14	12	10	8	6
36 and over 33	22	20	18	16	14	15	13	10	8	7
39 and over 36	23	21	19	17	15	16	14	11	9	7
42 and over 39	24	22	20	18	16	17	14	11	9	7

Rates in cents per 100 pounds for single-line application. By "single line" is meant one line of railroad or two or more lines of railroad under the same management and control— Continued.

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
45 and over 42	25	23	21	19	17	18	15	12	10	8
48 and over 45	26	24	22	20	17	18	15	12	10	8
51 and over 48	27	25	23	21	18	19	16	13	11	8
54 and over 51	28	26	24	22	18	19	16	13	11	9
57 and over 54	29	27	25	23	19	20	17	14	12	9
60 and over 57	30	28	26	24	19	20	17	14	12	9
63 and over 60	31	28	26	24	20	21	18	15	13	10
66 and over 63	32	29	27	25	20	21	18	15	13	10
69 and over 66	33	30	28	26	21	22	19	16	13	10
72 and over 69	34	31	29	27	21	22	19	16	13	10
75 and over 72	35	32	30	28	22	23	20	17	14	11
78 and over 75	36	33	31	29	22	23	20	17	14	11
81 and over 78	37	34	32	30	23	24	21	18	14	11
84 and over 81	38	35	33	30	23	24	21	18	14	11
87 and over 84	39	36	34	31	24	25	22	19	15	12
90 and over 87	40	37	35	32	24	25	22	19	15	12
93 and over 90	41	38	35	32	25	26	23	20	16	13
96 and over 93	42	39	36	33	25	26	23	20	16	13
99 and over 96	43	40	37	34	26	27	24	21	16	13
102 and over 99	44	41	38	35	26	27	24	21	16	13
105 and over 102	45	42	39	36	27	28	25	22	17	14
108 and over 105	46	43	40	37	27	28	25	22	17	14
111 and over 108	47	44	40	38	28	29	26	23	17	14
114 and over 111	48	45	41	39	28	29	26	23	17	14
117 and over 114	49	46	42	40	29	30	27	24	18	15
120 and over 117	50	47	43	41	29	30	27	24	18	15
124 and over 120	51	47	43	41	30	31	28	25	18	15
128 and over 124	52	48	44	42	30	31	28	25	18	15
132 and over 128	53	49	45	43	31	32	29	25	18	15
136 and over 132	54	50	45	43	31	32	29	26	19	16
140 and over 136	55	51	46	44	32	33	30	26	19	16
144 and over 140	56	52	47	45	32	33	30	26	19	16
148 and over 144	57	53	48	46	33	34	31	27	19	16
152 and over 148	58	54	49	47	33	34	31	27	19	16
156 and over 152	59	55	50	48	34	35	32	27	20	16
160 and over 156	60	56	51	49	34	35	32	28	20	16
164 and over 160	61	56	51	49	35	36	33	28	20	16
168 and over 164	62	57	51	49	35	36	33	28	20	16
172 and over 168	63	58	52	50	36	37	34	29	20	16
176 and over 172	64	59	53	51	36	37	34	29	21	16
180 and over 176	65	60	54	52	37	38	35	29	21	16
184 and over 180	66	61	55	53	37	38	35	30	21	16
188 and over 184	67	62	56	54	38	39	36	30	21	16
192 and over 188	68	63	57	55	38	39	36	30	21	16
196 and over 192	69	64	58	56	39	40	37	31	22	17
200 and over 196	70	65	58	56	39	40	37	31	22	17
205 and over 200	71	65	58	56	40	41	37	31	22	17
210 and over 205	72	66	59	57	40	41	38	32	22	17
215 and over 210	73	67	59	57	41	42	38	32	22	17
220 and over 215	74	68	59	57	41	42	38	32	22	17
225 and over 220	75	69	59	57	42	43	39	33	23	17
230 and over 225	76	70	60	58	42	43	39	33	23	17
235 and over 230	77	70	60	58	43	44	39	33	23	17
240 and over 235	78	71	60	58	43	44	40	34	23	18
245 and over 240	79	71	61	58	43	45	40	34	23	19
250 and over 245	80	72	62	58	43	45	40	34	24	19
260 and over 250	82	73	63	59	44	45	40	34	24	19
270 and over 260	85	74	64	60	44	46	41	35	25	20
280 and over 270	87	75	65	60	44	46	41	35	25	20
290 and over 280	88	77	66	61	45	47	42	36	25	20
300 and over 290	89	78	67	61	45	47	42	36	26	20
320 and over 300	94	82	70	62	47	48	44	37	27	21
340 and over 320	98	85	72	63	49	50	46	38	29	23
360 and over 340	98	85	72	64	49	50	46	38	30	25
380 and over 360	102	88	74	65	50	51	47	39	31	26
400 and over 380	102	88	74	66	50	51	47	39	31	26
450 and over 400	106	91	76	66	52	53	49	40	32	28

For joint line application the rates shall be made by adding to the rates prescribed in the above table the following amounts, in cents per 100 pounds:

Class	1	2	3	4	5	A	B	C	D	E
Rates	8	7	6	5	4	4	4	3	2	2

By "joint line" is meant two or more lines of railroad not under the same management and control.

When the sum of the rates prescribed for single line application is less than a joint rate made in accordance with the above instructions, the joint rate shall not exceed such sum of rates.

Rates so made not to exceed the following for distances not exceeding 450 miles:

Class	1	2	3	4	5	A	B	C	D	E
Rates	106	91	76	66	52	53	49	40	32	28

It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of traffic from points in said eastern Texas toward said Shreveport the provisions of the current western classification in effect at the time such traffic moves.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving rates for the transportation of any commodity from Shreveport, La., to points in said eastern Texas higher than are contemporaneously applied by them to the transportation of such commodity for an equal distance from points in said eastern Texas toward said Shreveport, or higher, distance considered, than the corresponding class rates already named herein, as the present relation of commodity rates is found in said report to be unjustly discriminatory.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of any commodity from Shreveport, La., to points in said eastern Texas, rates not in excess of those contemporaneously applied by them to the transportation of such commodity for an equal distance from points in said eastern Texas toward said Shreveport, and not in excess, distance considered, of the corresponding class rates already named herein, which relation of rates is found in said report to be nondiscriminatory.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 15, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving higher inbound rates for the transportation of uncompressed cotton from said eastern Texas to Shreveport La., for concentration there, than they contemporaneously apply, distance considered, to the transportation of uncompressed cotton to concentration points in said eastern Texas, as the present relation of rates is found in said report to be unjustly discriminatory.

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 15, 1915, upon notice to the Interstate Commerce Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the act to regulate commerce, and thereafter to maintain and apply to the transportation of uncompressed cotton from said eastern Texas to Shreveport, La., for concentration there, inbound rates not in excess, distance considered, of the rates contemporaneously applied by them to the transportation of uncompressed cotton to concentration points in said eastern Texas, which relation of rates is found in said report to be nondiscriminatory.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.

By the Commission.

[SEAL.] GEORGE B. MCGINTY, *Secretary*

Mr. BYARS. You stated that the Fort Worth shippers had slept on their rights.

Mr. BARROW. In the original case, and I state that most positively.

Mr. BYARS. Were they not denied the privilege?

Mr. BARROW. No, sir; that was a supplementary hearing. I am speaking of the original Shreveport Rate case in which no one from Texas appeared.

Now, if it please the committee, I wish to discuss briefly my views of the legislation as it has been proposed. The Shreveport Rate case simply rights a very grave and serious wrong. I take it that the fundamental question which this committee has before it is one of jurisdiction. When a case of discrimination, such as existed from Shreveport into Texas is pointed out, where is relief to be found?

It has been suggested by the bill, and by those supporting it, that all of the ills which have been brought to light in the Shreveport rate decision are going to be cured by saying that before the Interstate Commerce Commission can declare a State rate unreasonable there must be a court decision. That decision usually determines whether or not the action of the railroad commission fixing rates was reasonable. If it should determine that the action of the railroad commission in fixing rates was unreasonable, and this Railroad Commission follows its usual course of establishing a new schedule of rates, we will probably have the same chaotic condition which existed when the first proceeding was filed in the Shreveport Rate case. So that absolutely nothing can be cured by requiring a court decision as a determination of what shall be the measure of reasonable interstate rates.

Now, very recently there has been filed a case which brings concretely before the committee the proceeding as it is now followed by the Interstate Commerce Commission, and I wish to ask to have filed in the record a complaint which has been filed by the Natchez Chamber of Commerce. Natchez, of course, is just across the river from the northern part of the State of Louisiana and is almost directly east of Shreveport. The rates from Natchez to points in the State of Louisiana are higher than the intrastate rates in the State of Louisiana. The carriers have refused to extend to Natchez the mileage rates on commodities which have been established by the Railroad Commission of Louisiana, leaving discrimination between interstate and intrastate rates. Seventeen orders of the Railroad Commission of Louisiana are set forth in this complaint, and the Interstate Commerce Commission has notified the State commission in this form—I will read this letter, as it is the only copy I have [reading]:

MAY 19, 1916.

Mr. W. M. BARROW,
Counsel Railroad Commission of Louisiana, Baton Rouge, La.

DEAR SIR: Inclosed herewith for your information is copy of complaint of Natchez Chamber of Commerce *v.* Yazoo & Mississippi Valley Railroad Co., docket No. 8857.

This complaint is submitted to you in accordance with the amendment to rule 3 of the rules of practice before the commission adopted May 10, which provides:

"In case the discrimination alleged is between intrastate and interstate or foreign traffic the complaint should so state with sufficient definiteness fully to disclose the allegation made in respect to any tariff provision prescribed, established, or compelled by State authority. The commission desires in such cases to notify the State authorities of the complaint, and complainant must furnish sufficient copies for that purpose."

Directions have been given that you be advised of all future proceedings in this case.

Respectfully,

G. B. MCGINTY, *Secretary.*

The CHAIRMAN. The clerk will insert the complaint in the record without reading.

(The complaint referred to is here printed in full as follows:)

PETITION.

Before the Interstate Commerce Commission. Natchez Chamber of Commerce, complainant, *v.* The Arkansas, Louisiana & Gulf Railroad Co.; Alexandria & Western Railway Co.; The Chicago, Rock Island & Pacific Railway Co. and J. M. Dickinson, receiver; Franklin & Abbeville Railway Co.; Glenmora & Western Railway Co.; Gulf, Colorado & Santa Fe Railway Co.; Iberia, St. Mary & Eastern Railroad Co.; Iberia & Vermillion Railroad Co.; Illinois Central Railroad Co.; The Kansas City Southern Railway Co.; Kentwood & Eastern Railway Co.; Lake Charles & Northern Railroad Co.; Louisiana Railway & Navigation Co.; Louisiana Western Railroad Co.; Louisiana & Arkansas Railway Co.; Louisiana & Northwest Railroad Co.; The Missouri, Kansas & Texas Railway Co. of Texas and C. E. Schaff, receiver; Monroe & Southwestern Railway Co.; Morgan's Louisiana & Texas Railroad & Steamship Co.; New Iberia & Northern Railroad Co.; New Orleans, Great Northern Railroad Co.; New Orleans, Texas & Mexico Railroad Co. and J. D. O'Keefe, receiver; New Orleans & Northeastern Railroad Co.; North Louisiana & Gulf Railway Co.; Ouachita & Northwestern Railroad Co.; St. Louis, Iron Mountain & Southern Railway Co. and B. F. Bush, receiver; The Texas & Pacific Railway Co.; Tremont & Gulf Railway Co.; Vicksburg, Shreveport & Pacific Railway Co.; The Yazoo & Mississippi Valley Railroad Co.; Natchez & Louisiana Railway Transfer Co.; The Natchez & Southern Railway Co.; Arkansas & Louisiana Midland Railway Co., respondents. I. C. C., 8920.

PETITION.

The petition of the above-named complainant respectfully shows:

I. That the Natchez Chamber of Commerce is a voluntary association of the citizens of Natchez, Miss., duly organized, having its domicile in the city of Natchez, Miss., having for its purpose the general welfare of the city of Natchez, Miss., and the protection of the interests of Natchez shippers and receivers of freight in particular.

II. That the city of Natchez, Miss., is located on the East bank of the Mississippi River, opposite the Louisiana shore, approximately 200 miles north of New Orleans, La., by rail, and 300 miles south of Memphis, Tenn., by rail, containing a pupulation of between ten and twelve thousand inhabitants, and is the domicile of a considerable number of wholesale dealers and jobbers of groceries, feed, flour, seeds, dry goods, clothing, coal, cotton, cotton seed products and many other articles of commerce usually handled by wholesalers and jobbers, and in addition to the above dealers also has a number of manufacturing enterprises, engaged in the manufacture of candy, ice, soft drinks, milling of grain, and packing of meat and its products, and various other commodities.

III. That the respondents named above are common carriers within the commonly accepted meaning of that term, engaged in the transportation of persons and property by rail or by water or by both between points in one State and points in another State, and as such common carriers are subject to the provisions and requirements of the act to regulate commerce approved February 4, 1887, acts amendatory thereto or supplementary thereof.

IV. That respondents named herein publish and apply, for the transportation of soda water, pop, mineral waters, and all nonalcoholic beverages in less than carload lots between points located in the State of Louisiana the following scale of rates, applicable over one line of railways:

	Cents per 100 pounds.
10 miles and less	10
15 miles and over 10	12
20 miles and over 15	14
35 miles and over 30	20
50 miles and over 45	26
75 miles and over 70	36
100 miles and over 80	40

and on joint through shipments between points in the State of Louisiana over two or more lines of railway, the rate is made the sum of the mileage rates less 10 per cent, said rates being prescribed by the Louisiana Railroad Commission in its Order No. 1029, effectlve July 15, 1909. That the respondents also publish and apply for the transportation of cotton seed for planting purposes between points in the State of

Louisiana the following scale of rates in carload and less than carload quantities, over one line of railway:

	Cents per 100 pounds.
10 miles and less	6
20 miles and over 15	8
40 miles and over 30	10
80 miles and over 60	12
100 miles and over 80	13
160 miles and over 140	16
225 miles and over 200	19
325 miles and over 300	23
350 miles and over	25

and on shipments moving over two or more lines of railroad the rate is made the sum of the above mileage rates less 10 per cent, said rates being prescribed by specific order of the Louisiana Railroad Commission in its Order No. 962, issued January 27, 1909; that the above respondents operating west of the Mississippi River publish and supply the following scale of rates on mixed stock feed consisting of corn products, wheat products, and cottonseed meal, carload and less than carload quantities from Alexandria, La., to points in the State of Louisiana west of the Mississippi River:

Mileage.	Rates in cents per 100 pounds.	
	Carloads.	Less than carloads.
10 miles and less	7	10
30 miles and over 20	9	12
50 miles and over 40	11	14
80 miles and over 70	12	18
100 miles and over 90	13	19
Over 140 miles	17	25

said rates being prescribed for use on all roads west of the Mississippi River by the Louisiana Railroad Commission in its Order No. 1346, effective January 1, 1912; that the above named respondents also publish and apply on the transportation of cleaned rice in carload and less than carload quantities between points in the State of Louisiana the following rates in cents per 100 pounds:

Distance.	Carloads.	Less than carloads.
10 miles and under	5½	11½
20 miles and over 15	6½	12½
40 miles and over 30	8½	14½
80 miles and over 70	11½	17½
100 miles and over 90	12½	18½
Over 125 miles	14	20

and on shipments moving over two or more lines between points located in the State of Louisiana the rate is made the sum of the above mileage rates less 10 per cent, subject to a maximum of 17 cents on carloads and 24 cents on less than carloads, said rates being prescribed by the Louisiana Railroad Commission in its Order No. 1072, effective December 1, 1909; that the respondents named above publish and apply on the transportation of petroleum and its products in carloads and less than carload quantities between points in the State of Louisiana over one line the following scale of rates, in cents per 100 pounds:

	Less than carloads.	Carloads.
5 miles and less	9	5
50 miles and over 45	14	9
100 miles and over 95	20	12
150 miles and over 140	23	14
200 miles and over 190	26	16
300 miles and over 290	32	19
Over 400 miles	35	27

and that on shipments moving over two or more lines between points located in the State of Louisiana, the rate is made on less-than-carload shipments by adding 6 cents to the above rate for the total distance with a maximum less-than-carload charge of 35 cents per 100 pounds, said rates being prescribed for use on all railroads in the State of Louisiana by Louisiana Railroad Commission Order No. 1621 of September 26, 1913; that the respondents named above publish and apply for the transportation of ice in carload and less-than-carload quantities between all points in the State of Louisiana the following scale of rates, in cents per 100 pounds:

Distance.	Carloads.	Less than carloads.
20 miles and under	4.4	10
50 miles and over 30	5	15
100 miles and over 80	6.5	20
150 miles and over 125	8	35
Over 200 miles	10	50

said rates being prescribed for use on all railroads in Louisiana by Louisiana Railroad Commission Order No. 219 of August 13, 1902; that respondents named above publish and apply on the transportation of second-hand machinery between points in the State of Louisiana, shipped for the purpose of being repaired and returned to original owner, one-half of the regular tariff rates, said rates being prescribed for use on all railroads in the State of Louisiana by Louisiana Railroad Commission Order No. 1117 of March 23, 1910, and that in addition to the above specific cases there are many other rules and rates applying over all or many railroads in the State of Louisiana that are prescribed by the Louisiana Railroad Commission, among which are Orders No. 1267 of May 24, 1911, applying on various commodities from Shreveport, La., to destinations in the State of Louisiana; Order No. 1309 of September 20, 1911, applying from Alexandria, La., to various points in the State of Louisiana; Order No. 193 of May 22, 1902, applying on fuel oil between all stations in Louisiana; Order No. 1838 of January 1, 1915, applying on asphalt and pitch between all points in the States of Louisiana; Order No. 362 of June 17, 1904, applying on live stock between all points in the State of Louisiana; Order No. 1275 of July 7, 1911, applying on well-boring outfits between all points in the State of Louisiana; all of which orders herein referred to being hereby made a part of this compalint by reference thereto.

V. That all of the rates as set forth in Paragraph IV hereof apply to and from the city of Vidalia, La., which point is located on the St. Louis, Iron Mountain & Southern Railway Co. on the west bank of the Mississippi River opposite to Natchez, Miss., and that none of the rates mentioned therein apply to or from Natchez, in every instance there being a materially higher level of rates on the commodities mentioned, applying from Natchez, Miss., as is more fully set forth in the following tariffs, to wit: M. P. Ry., I. C. C. A–2956; M. P. Ry., I. C. C. A–2671; M. P. Ry., I. C. C. A–2567; M. P. Ry., I. C. C. A–2962; M. P. Ry., I. C. C. A–2397; M. P. Ry., I. C. C. A–2813; M. P. Ry., I. C. C. A–1243; M. P. Ry., I. C. C. A–2578; and other tariffs naming through rates from Natchez, Miss., to Louisiana points, or that are used in making combination rate where no through rate is published, all of which tariffs are hereby made a part of this complaint by reference thereto.

VI. That Natchez dealers in the above commodities, trading at any point in the State of Louisiana, must meet competition from Louisiana jobbing points such as New Orleans, Alexandria, Shreveport, Monroe, and other smaller jobbing points, all of which Louisiana points enjoy the benefit of the scale of rates, prescribed by the Louisiana Railroad Commission as set forth in Paragraph IV hereof, said rates being materially lower, mile for mile than are the rates on same commodities from Natchez, Miss., to Louisiana destinations.

VII. That Natchez, Miss., is served by the Yazoo & Mississippi Valley Railroad Co., the Mississippi Central Railroad Co., and the St. Louis, Iron Mountain & Southern Railway Co., the latter company reaching Natchez from Vidalia, La., over the rails and facilities of the Natchez & Louisiana Railway Transfer Co. and the Natchez & Southern Railway Co., both of which are owned and controlled by the St. Louis, Iron Mountain & Southern Railway Co.

VIII. That the maintenance by the respondents hereto of the rates applicable between points in Louisiana as set forth in Paragraph IV hereof, and refusal to provide similar rates for interstate shippers located in Natchez, Miss., is unreasonable, unjust, and is unduly prejudicial and discriminatory against shippers located in Natchez and and in preference to shippers located in he State of Louisiana, and are in violation of

sections 1, 2, and 3 of the act to regulate commerce, wherefore, your petitioner respectfully prays that the respondents hereto and each of them be required to answer the complaint set forth herein and that after due hearing and full examination, an order be made requiring said respondents and each of them to cease and desist from the illegal practices complained of herein and that they and each of them, be further required to publish and apply rates on the commodities mentioned herein, from Natchez, Miss., to all points located in the State of Louisiana that are no higher than the charge made for the same service between points located in the States of Louisiana, and for such other and general relief as petitioner's cause may seem to require and the wisdom of the commission dictate.

NATCHEZ CHAMBER OF COMMERCE,
Per B. F. MARTIN, *Traffic Manager.*

NATCHEZ, MISS., *May 31, 1916.*

Mr. BARROW. In accordance with that ruling of the Interstate Commerce Commission, the Attorney General's department and the Railroad Commission of Louisiana have been served with copies of these complaints and have notified the commission that they intend to appear before the commission when this hearing is set and defend the rates of the Railroad Commission of Louisiana.

Now that brings me to a discussion of what I think is the proper and practicable solution of this vexed question. I think Texas has gotten entirely too much worked up over the Shreveport rate decision. If it is the idea of the Texas commission that they may continue the avowed policy of the earlier days of this commission of fixing rates which purposely give its own shippers preference, then certainly we need the most drastic sort of regulation, because if that kind of policy is to be followed by any State it is at once apparent that any State has within its power the shutting out of competition from its border States, especially from those competitive towns whose natural advantages entitle them to consideration. There is nothing in the statutes or jurisprudence of our country which indicates that it was ever intended that there should be such a policy adopted by any State, and certainly when that policy is declared in direct terms by a board with such authority as the Texas Railroad Commission has, there must be some power great enough to correct the evils which it produces, so that as a practical solution of this question the Interstate Commerce Commission has done in the Natchez case what we hoped would have been done in the Shreveport rate case. They have notified the State authorities that here is an attack upon State-made rates. The carriers naturally in their answers to this complaint are doing what they did in the Shreveport rate case. They are saying that the State-made rates of Louisiana are forced upon them; those discriminations exist but they are not voluntary. They say: "They are unjust, but we have no power to remedy the situation, and we submit to the commission that in all fairness our rates should be advanced—discrimination against Natchez should be removed by advancing the rate made by the Railroad Commission of Louisiana." As I have said, we have put ourselves on record and requested a postponement of this case for the purpose of presenting the evidence upon which these rates in the State of Louisiana were established in order to show the Interstate Commerce Commission that those rates are reasonable.

Now, if we have an attack against these rates in the courts; if the railroads of Louisiana had stated to the court, what they are doing now in their answers before the Interstate Commerce Commission, that these rates were unreasonably low, we would have had to meet

issues there exactly in the same way as we expect to meet them before the Interstate Commerce Commission. We would have had to show to the courts that our records had been made up properly; that there had been a hearing, and this hearing had not been arbitrary, but there was sufficient evidence to support our order, and having shown that record to the court we would rest our case confident that those rates would not be disturbed.

Now, we expect to follow exactly that practice in defending this attack upon the Louisiana rates before the Natchez Chamber of Commerce. Mind you, this is an attack not directly against the Louisiana rates but it is an attack against the carriers on the ground that they are discriminating against the city of Natchez by charging higher rates between Natchez and Louisiana points than they charge for similar transportation to points in Louisiana. So we have exactly the same situation presented as to Natchez as we had in the Shreveport rate case, and we expect to meet it in a practical way and in the only practical way. We expect to defend those rates with confidence that if we can defend the rates before any court we can equally defend them before the Interstate Commerce Commission, with the further confidence that if we do defend them before the Interstate Commerce Commission that our defense of the rates will be given just as much consideration as it could be in any court.

Now this, it seems to me, presents a very forcible case for the consideration of the committee, that the statute as it is at present written affords the relief which is necessary in order to remove this discrimination which all of the border cities in the Union are complaining of, and I do not believe there is a city which is located on a State line in the United States that would not subscribe to the Shreveport rate case decision if they knew this hearing was going on to-night, because there is absolutely no relief from any discrimination in interstate rates when that discrimination is caused by relationship to intrastate rates, unless that relief can be found in the interstate commerce act

We have heard some very impassioned arguments to-day which all tend to the conclusion that the failure to pass the Sheppard bill is going to result in the abolition of the State railroad commissions There is a lot of work left for the State railroad commissions. If the State railroad commissions have been superseding their authority, it is time they were set back to their proper places. If the State railway commission of any State in the Union has the power by its avowed policies to destroy the commerce of another State, then certainly this committee and this Congress should not pass any bill which would take that power away from the Interstate Commerce Commission to correct such evils.

It has been suggested that it would be very expensive, troublesome, annoying, and inconvenient to bring small cases before the Interstate Commerce Commission if this power should be so extended as to take over all regulation of interstate rates. I can not subscribe to the doctrine that because a thing may be inconvenient or because it is troublesome, or because the Interstate Commerce Commission may not be as well equipped as it should be for carrying on its tremendous work, that the whole system of regulation which has been built up in this country for the past 30 years should be wiped out. I can not subscribe to the doctrine that because it is inconvenient and expensive for a man to bring a complaint under the present

system that the ultimatum is the wiping out of the present system and the return to a system which would absolutely give no relief whatever as to interstate rates, and I believe that when all of the evidence has been heard by this committee it will be found that there is no practical solution of the absorbing question of the regulation of interstate commerce and the complex conditions which arise from conflicts between State and Federal laws except the broadening of the powers of the Interstate Commerce Commission—not the abolition of the State railway commissions but the upholding of the Interstate Commerce Commission as it exists to-day, and as its authority has been exercised in the Shreveport rate case, so that when these discriminations are found to exist there may be ready a forum which can correct them.

Mr. Chairman, I am informed that I have exceeded the limit of time allowed me.

The CHAIRMAN. You have been somewhat interrupted, and if you desire 10 minutes more, you may have that time.

Mr. BARROW. There is just one other thought that I would like to present. It was stated by Commissioner Mayfield to-day in his argument that, representing the State of Louisiana, I had made the positive assertion in the hearing at Houston that we were there to wipe out the rates of the whole State of Texas. That assertion is not borne out by the record. It would be idle for me to dispute what the record would so clearly show to be the contrary, but I want to place in the record here the denial that I have occupied such position before any commission. I think there is still a wide field of regulation which can be occupied by the States, and I think there will always be more or less conflict between State and interstate rates just as there is conflict between State and interstate laws, but none of those conflicts and none of the conditions of government which create those conflicts, to my mind, are sufficient reason for destroying the usefulness of the Interstate Commerce Commission by the passage of the Sheppard bill, as I confidently believe to be its purpose.

Mr. Chairman, Mr. Walter, who has been with this case from its inception, will address the committee upon the legal phases of the matter.

I thank the committee for its courtesy.

The CHAIRMAN. The committee will now hear Mr. Luther Walter.

STATEMENT OF MR. LUTHER M. WALTER, ATTORNEY AT LAW, CHICAGO, ILL.

Mr. WALTER. Mr. Chairman and gentlemen of the committee, I do not want to get away from the question here by discussing any of the liberties of our forefathers as was discussed to-day. I want to give you, as I understand it, an idea of just what this case came from and how it was handled by the commission and to show you that nobody has been wronged or injured in any of their rights in any manner whatever.

To-day for the first time in the history of this case have we had a member of the Texas commission to come before anybody to explain or give in any way any defense of the rates that have been under attack for more than five years. We did all we could to get the Texas commission to come in and help find the facts, as we are supposed to give you the facts here; but we could not get them to attend any

of the hearings until the supplementary hearings at Shreveport. They sat in the back of the room and refused to take part. They attended the hearing on the last petition at Houston, but took no part whatsoever in presenting any facts that would aid the commission in determining what ought to be the solution.

Now, I desire first to show you that the whole purpose of the Texas Railroad Commission for years, and even until recently—and we are unable to show you that it is entirely ceased—that the whole purpose was to control the trend of traffic or commerce, so as to give to Texas the profits from the purchase and sale of raw material and the purchase and sale of manufactured products.

A long time ago, before they had become a little discreet, the State commission, in its annual report circulated throughout the State, voluntarily stated the purpose of the commission. As long ago as the third annual report of the Texas commission they stated, at page 7——

Senator BRANDEGEE. What year was that?

Mr. WALTER. That would be about the year 1892. They state as follows:

> The stability of interstate rates is also more secure under the indirect influence of the commission.
>
> The policy of this commission is to preserve an equitable and just relation between State and interstate rates to competitive points in Texas and to preserve to the people of Texas the advantages of their location. In pursuance of this policy the commission has determined to meet reductions in interstate rates by a corresponding reduction in State rates on any given article manufactured or produced in this State, particularly if it appears that the purpose of the cut in interstate rates is to deprive the home product of its legitimate market. This purpose has been repeatedly announced to the managers of railroads in Texas and has no doubt exercised a considerable influence in maintaining interstate rates.

They further say:

> The commission's policy has been to encourage the interests of Texas merchants and manufacturers, and to do this reduction of rates have frequently been necessary. The figures will show that, as a general proposition, it is more profitable to a Texas road in the transportation of a given quantity of goods in less than carloads to make the haul wholly within the limitt of the State than to transport the same quantity of like goods as one of a number of connecting lines operating from points beyond the limits of the State, the difference being that the divisional part of a Texas road of a through interstate less-than-carload rate is usually less than the local less-than-carload rate it receives on shipments from one point in Texas to another, added to the divisional part the carrier receives on carload shipments to Texas distributing point.

Mr. HAINES. Would you mind reading that first quotation again?

Mr. WALTER. I do not know that I want to take up all the time of the committee by repeating.

Mr. HAINES. But it is important. You made a statement a moment ago that the Texas Railroad Commission sought to do certain things. I want you to read that quotation again and then to state if that is not the duty imposed on the Texas carriers by the Texas statute?

Mr. WALTER. You will get my idea, I think. The report proceeds [reading]:

> This commission in establishing rates on freight in this State was controlled in a large measure by the rates made on interstate shipments, which it could not control. Our action in making rates in the past has been seriously embarrassed by the lower rates relatively, which were made on commodities and merchandise shipped into and out of the State, than those which prevailed on shipments wholly in the State; and also by the failure of the railroads to maintain even lower rates on interstate shipments. These facts will explain, in part at least, the necessity which compelled us to reduce rates in many instances.

Now they go on and recite a number of the Southwestern Traffic Association acts.

That the State commission of Texas was not so much concerned with the amount of the rate as it was with the relation of the State to interstate, appears in the same report at page 19, from which I quote:

> This commission has often stated to the freight agents and traffic managers in their meetings with it that if the railroad companies engaged in interstate shipment would make and maintain rates which would be fairly compensatory to them on such shipments, this commission would do all in its power, by its rates, to secure them reasonable revenue on their railroad investments in this State. And we now repeat that statement. But this suggestion contemplates good faith on both sides in the making and maintaining of rates.

Then they go on to state:

> But there is another view of the question that is still more important. To Texas as a whole it is of the most vital concern that there should be within her limits, at proper places, jobbing and manufacturing establishments. Besides adding to the citizenship of the State a desirable population, and furnishing employment to persons already in our midst, and enhancing the taxable values of the State, and, as a consequence, under wisely administered government aiding in ultimately reducing the rate of taxation, and besides the home market they afford to the tiller of the soil and other producers, including manufacturers, for their products, if men in Texas having the capital to engage in a wholesale business or in a manufacturing enterprise, for the success of which natural conditions are favorable, they have as much right to invest their means in such business or enterprise as a man in Illinois or Missouri has to embark in such business or enterprise in his State.

Then they say:

> This commission has always had in mind the securing of relatively just State and interstate rates, with a view of enabling Texas merchants and manufacturers to do business in competition with outsiders; and, as shown by its last annual report, it has secured substantial benefits in this line. Besides what is there stated, it has, when its attention has been directed to changes in interstate rates, made corresponding changes in State rates whenever it could do so before the restoration of interstate rates. Occasionally it has transpired that reductions have been made in interstate rates, but before the commission could give 10 days' preliminary notice required by law and 20 days' notice after hearing before rates prescribed by the commission can take effect, the interstate rates have been restored. In recommendations of legislation the commission in another place has suggested that the law be amended so as to enable the commission to act in less time than is now necessary to establish a rate. To meet cuts in interstate rates, such legislation is requisite.
>
> In presenting in another place the matter of the application of the railroad companies for an increase of rates, reference will again be made to the subject of interstate rates.

Mr. WALTER The State legislature gave them the power whenever they believed that an emergency existed, without hearing, to establish and put into effect any such rate as they saw fit, and to show you the extent to which they used it, they made a rate of 7 cents per 100 pounds on window glass good for any transportation in the State of Texas, no matter whether it was from El Paso to Texarkana, and that rate remained in effect for three years. The Railroad Commission of Texas has a graduated schedule of rates within common-point territory, which embraces all of eastern Texas and even takes in the home of our good friend, Amarillo, and that is why Amarillo is here, because they know they have no right to the same rate in west Texas as is in effect in eastern Texas. So this distance scale was put in, graded up to 245 miles; then when you go beyond 245 miles everything in that territory up to 700 miles would move at

the same rate as though it were only to be hauled 245 miles. Texarkana was put out of the State of Texas, although right on the line. They could ship in any products and they could receive Texas shipments; so the Texas commission in order to give an advantage to towns in east Texas provided that the scale of rates in eastern Texas should be 80 per cent of the class scale but not to apply on shipments from Texarkana, Tex. That 80 per cent scale remained in effect until only a few months ago.

At the time the complaints of the Shreveport interests were brought, and even to-day, many freight rates are higher than first-class merchandise express rates which involve the pick-up service at one end.

Now, with that status of affairs—but before I get to that I want to say this: That as exceptions were made to the western classification, giving an article a lower rating, Texas took all the exceptions and made them into the Texas classification and prescribed them for use by the railroads in the State of Texas, and under that shippers can mix almost anything. Sanger Bros., of Dallas, a great dry-goods store, can take anything they sell and ship in the same car at the same low rate; manifestly a dry-goods competitor compelled to ship under the western classification in interstate commerce can not compete with such an advantage as that.

This complaint was brought against the rates from Shreveport into east Texas, because, first, that they were excessive and extortionate and in violation of section 1 of the act to regulate commerce, and that they violated sections 2 and 3, which prohibit unjust discrimination and undue preference, and that they violated section 4, or the long-and-short-haul clause. We knew when we filed the complaint that the Interstate Commerce Commission had in previous cases ruled that they had no such jurisdiction, but we brought the case in order to make a test proposition. When the commission decided it they wrote six opinions. The majority opinion was written by Secretary Lane, and it prescribed rates for only two lines—the Sunset Central Route and Texas & Pacific. It only took care of the business between Houston and Shreveport on the Sunset Central and between Dallas and Shreveport on the Texas & Pacific, the Sunset Central being made up of Houston & Shreveport Railroad, which ran from Shreveport to the State line, and the Houston, East & West Texas Railroad which ran on west to Houston.

I should say the dissenting opinions were on the question of jurisdiction, because nobody has ever denied that on the facts we have established our right to relief. And, in passing, I will say that in the last case not a single witness who appeared on behalf of the carriers, the Texas interests, or anyone else, but admitted we were wronged, that our rates were unlawful, but said they "Do not raise the Texas rates—lower the interstate to the Texas level." That has been the dispute. In this decision the commission found class rates unjust and unreasonable and ordered them reduced to practically the Texas scale, which runs out at 245 miles. Houston is not that distance from Shreveport, neither is Dallas; the class rates were established the way the commission ordered. The part of the order as to commodity rates became the test case; the commission held that the carriers must not charge on traffic to or from Shreveport more than was charged for the like distance for a distance wholly

within the State of Texas on the railroad between Houston and Shreveport, or between Dallas and Shreveport, with the further proviso that no commodity rate could exceed the class rates. So the carriers went to the Supreme Court on the proposition as to whether the commission had the power to make that sort of order.

Coupled with that was the case as to cotton. Something was said to-day about the farmers of Texas being tools of the carriers; I want to read to you three letters, written just at the time we were preparing our contest to be filed with the Interstate Commerce Commission.

On September 15, 1910, Mr. J. R. Christian wrote to the honorable railroad commissioner of Texas, at Austin, Tex., as follows [reading]:

The honorable RAILROAD COMMISSION OF TEXAS,
Austin, Tex.

GENTLEMEN: We have received requests from cotton men along our line south of Shreveport, also on the Texas & Gulf and Timpson & Henderson, also merchants at Shreveport, for the establishment of a concentrating privilege at Shreveport on cotton from the points indicated.

We have hesitated so far to establish any such privilege, feeling that it might not meet with the entire approval of the Railroad Commission of Texas. However, we are advised that such privilege would give a better market for cotton to the producers along the lines indicated, and as such would be an advantage to the Texas farmer.

Under the circumstances, if you will advise us that you do not disapprove of the plans, we will take steps to see if we can not meet the views of our cotton friends in regard to this feature.

Yours, truly,

J. R. CHRISTIAN, *General Freight Agent.*

Under date of October 6, 1910, Chairman Mayfield wrote Mr. Christian this letter [reading]:

Referring to your letter of September 15, with respect to the contemplated establishment by your line of a concentrating privilege at Shreveport on cotton from points on your line south of Shreveport, and also from Texas & Gulf and Timpson & Shreveport points, we beg to advise you that your communication has been duly considered by the commission and we beg to state that the establishment of such an arrangement would not meet with the approval of this commission.

On October 8, two days later, Mr. Christian again wrote Mr. Mayfield [reading]:

Answering your letter of October 6 in regard to concentrating Texas cotton at Shreveport, beg to say I am inclined to think there was a failure on my part to present the matter in as strong a light as the merits of the case required. At present other Shreveport lines are granting concentrating privileges there on Texas cotton, and so far we have failed to meet the reasonable requests of our patrons at Shreveport in order to conform to the wishes of the railroad commission in this matter.

But, not only would this privilege be desirable from the point of view of our Shreveport friends, but also in the interest of merchants and producers on the lines of the Houston East & West Texas Railway, who are limited in their marketing facilities, because the progressive merchants of Shreveport are barred from buying on the line of the Houston East & West Texas on account of the combination of local rates which they would have to pay. As a matter of revenue, the Sunset Central Lines would suffer no loss, because the cotton would move into Shreveport on the local rate, no part of which would be refunded unless the cotton moved out over our line, and we would propose to assess a slight penalty for the concentration privilege.

Under the circumstances, I hope you will find yourself in a position to say that such an arrangement would not provoke the hostility of the railroad commission.

October 24 the Texas commissioner wrote Mr. Christian the following letter [reading]:

Referring to your letter of the 8th instant, file 3-318, in which you refer to this commission's letter of the 6th in regard to concentrating Texas cotton at Shreveport,

and asking a reconsideration by the commission of the conclusion reached by it in this matter, we beg to advise that, upon further consideration, the commission adheres to the advice given you in its former letter on this subject.

Now, when we came to our hearing on the Shreveport case, among other things asking for the cotton privilege so that the farmers in Texas could sell to the Shreveport buyers and the Shreveport buyers could compete with Galveston buyers in getting the cotton, a number of Texas people came down to the hearing and there were represented, according to the transcript from the Interstate Commerce Commission, various interests from Galveston, Jefferson, Pittsburg, Texarkana, Amarillo, Carthage, and Dangerfield, various interests, and a very important piece of evidence came in at that time. Among others was a bright young commercial man named Pitt, of Texas, who did not want to come down and intervene if the Texas commission did not wish him to do so, so he wrote the commission asking for a statement from it about this Shreveport case, and here is the letter the chairman of the commission wrote Mr. Pitt on September 12, 1911, which I will ask may be printed in the record.

The CHAIRMAN. Without objection that will be done.

(The letter referred to is here printed in full, as follows:)

AUSTIN, TEX., *September 12, 1911.*

Mr. H. B. PITTS,
Secretary Progressive League, Marshall, Tex.

DEAR SIR: We beg to acknowledge the receipt of your letter of the 9th instant, with which you inclose letter from Mr. A. T. Kahn, of Shreveport, to Mr. W. L. Martin, of your city, with reference to securing a reduction of rates on classes from Shreveport, and we note your request for a statement from this commission in order that you may properly understand the matter involved, and in reply you are advised:

For the rates referred to from Shreveport to Texas points to be reduced would, in the opinion of this commission, be very much against the interests of the Texas jobber whom it has been the endeavor of this commission to protect, and by way of explanation we will state:

Shreveport enjoys now, and has for years past, very low carload rates from northern and eastern points, much lower than the carload rates on the same commodities from the same points to Texas jobbing points. These carload rates in plus their local rates out to Texas points gave them, of course, an advantage over the Texas jobber, and to offset this the commission adopted an adjustment of rates which you will find on page 263 of our nineteenth annual report, copy of which is being mailed to you under another cover. For the local rates to be now reduced from Shreveport to Texas points would tend to counteract the effect of the commission's action and to place the Texas jobber at the same disadvantage under which he previously labored.

Yours, respectfully,

ALLISON MAYFIELD, *Chairman.*

Mr. WALTER. And yet Mr. Mayfield to-day would have you understand that our rates ought to be reduced; that he was glad to see it done; that there should be no advance in rates in the State of Texas.

A moment ago Mr. Haines said he never asked a question when he appeared for Galveston, but if he will turn to page 64 and page 81 of the record, for many, many pages, Mr. Haines, either in the rôle of an interrogator or a volunteer of facts appears time and again.

So, I make the unqualified statement that there has never been, throughout the course of the Shreveport case, any effort to prevent any fact being made of record or to take any undue advantage of any interest—on the contrary we have sought all the information that could be had from any one in connection with the case. After the Supreme Court had sustained the order, we had expected the carriers in good faith to put in effect the principle established throughout their lines; but they said: "No; we can not do it; there is a heavy penalty

in the State of Texas for failing to comply with an order of the State commission, and we must have an order from the Interstate Commerce Commission on every particular commodity before we can change our rate."

Then, by a supplemental petition, we asked the commission to require all the carriers, that were parties to the original case, on all the business between Shreveport and on all points east of the Gainesville-Brazos River line, to apply the relation which the Supreme Court said the commission could lawfully require. And when that was done the carriers were again expected to extend it throughout their lines. Did they do it? No. They simply moved the State line of Texas from 19 miles west of Shreveport to 245 miles west of Shreveport, and we had again to file another complaint with the commission and attack the lawfulness of all rates between Shreveport and all points in Texas.

That hearing has been had; we have shown our interest in rates to far western Texas; that many raw products are for sale, for example, 1,600 carloads of peanuts are for sale in west Texas, and we have factories in Shreveport that buy in competition with those who are located in the State of Texas. We find our fertilizer manufacturers buying the raw material and selling the finished product in western Texas. We find our jobbers of sash, doors, and blinds selling under rates that, if they stay as they are now, are 200 to 300 per cent of the rates for like distances in the State of Texas.

And so we are asking for no higher rates on our articles than the Texas man for like distances pays on his—bear in mind that we are located where the carriers can transport as cheaply, distance considered, as they can anywhere in the State of Texas, and when you go to El Paso we would have a greater percentage of our haul in low-rated territory than would the Dallas man or the Houston man or the San Antonio man shipping to the same territory.

I think that is sufficient to give you an understanding of the case. Now, let us see just what they undertake to have you say to the Interstate Commerce Commission. I gave you this morning the rates on buggies from Shreveport. And, by the way, the buggies that have been sold from Shreveport for the last 15 years in eastern Texas and near-by points have been tied one behind the other and hauled across the State line. Live stock has been bought in central Texas and shipped to the State line, unloaded and driven into Shreveport and fattened at our oil mills. That is the way business has been done and is being done and will be done until the Interstate Commerce Commission can iron out the situation.

But let us take this bill as it has been introduced here by Senator Sheppard and see what would be the effect. They say no order of the commission wiping out discrimination can go into effect—can alter the State rate—until there has been a determination that the rate fixed by the State is unreasonable. What does "unreasonable" mean? There is not a single decision of any court that holds that a court has a right to determine whether the rate on buggies from Shreveport to Jefferson should be 20 cents or 22 cents. Courts do not do that sort of business. They do pass on the question as to whether the general schedule of rates is confiscatory; and it is with that sense that the word "unreasonable" is used in the decisions. I have never yet been able to find a decision of any court holding that

a given rate on a given single commodity between two points is unreasonable.

On the contrary—taking first the Gill case—in the case of the St. L. & S. F. Ry. Co. *v.* Gill (156 U. S., 649) the Supreme Court of the United States held that it was not warranted in declaring invalid an act of the Legislature of Arkansas where it did not appear that the entire body of rates returned an insufficient revenue. The carriers contended that on a particular branch of the Frisco the rates established by the State commission would not earn the operating expenses. Here is a quotation from that decision [reading]:

It therefore appears that the allegations made and the evidence offered did not cover the company's railroad as an entirety, even in the State of Arkansas, but were made in reference to that portion of the road originally belonging to the St. Louis, Arkansas & Texas Railway and extending from the northern boundary of Arkansas to Fayetteville, in said State. In this state of facts we agree with the views of the Supreme Court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company can not claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas.

To the same effect is the case of the Minneapolis & St. Louis Railway Company *v.* Minnesota (186 U. S., 257); there it was contended that a rate fixed on coal was unlawful because it was not a reasonable rate. It was asserted that the testimony showed that the rate fixed by the commission on coal, if applied to all freight, would not permit the road to pay operating expenses. The Supreme Court said as to that [reading]:

Notwithstanding the evidence of the defendant that if the rates upon all merchandise were fixed at the amount imposed by the commission upon coal in carload lots, the road would not pay its operating expenses, it may well be that the existing rates upon other merchandise which was not disturbed by this commission may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in carload lots.

Then, after stating further that the companies were not entitled to earn the same percentage of profit upon all commodities, the court further said [reading]:

While we never have decided that the commission may compel such reductions, we do not think it beyond the power of the said commission to reduce the rate upon a particular article, provided the companies are able to earn a fair profit upon their entire business, and that the burden is upon them to impeach the action of the commission in this particular.

That is the Supreme Court of the United States. Here are some State court decisions. In Southern Railway *v.* Atlanta Stove Co. the court said [reading]:

The commission fixes a schedule of rates; some commodity rates are higher than others, and necessarily so; the entire body of rates are prescribed with respect to their interrelation: the low rate is presumably fixed with reference to the higher rate and conversely; and a particular rate can not be said to be unreasonable without showing it to be such when taken in connection with the whole body of rates.

In Mathews *v.* Board of Corporations of North Carolina (106 Fed., 7) the court, in passing upon the question of the reasonableness of particular rates, after citing Smyth *v.* Ames, said:

"In this connection it must be borne in mind that the Supreme Court of the United States, in deciding whether the rates fixed under legislative authority violated the fourteenth amendment, did not rest their judgment on one set of rates for specific articles, but they took into consideration all the rates on all articles and decided whether as a whole the result is unreasonable."

Senator CUMMINS. If it will not interrupt you too much, I want to get your view about what this bill means.

Mr. WALTER. I was just going to come to that and apply these decisions to show that the purpose was to make it impossible under our law to get any action from any court which would affect in any way any rate prescribed by a commission in an ordinary case that comes before the Interstate Commerce Commission.

Senator CUMMINS. That is not just the point I should like to call your attention to.

Mr. WALTER. I am at your service.

Senator CUMMINS. Although that is well worthy of consideration. The matter in my mind, since I first read the bill, is whether the bill proposes to deprive the Interstate Commerce Commission of jurisdiction, or whether it proposes to defer the operation of any order until the condition that is prescribed in the last paragraph is complied with.

Mr. WALTER. I think that is the more proper conclusion. I think that the whole effect of this amendment would not be to take from the commission the power to issue the order which it did in the Shreveport case, but the rate of the Texas commission upon commodities, bearing in mind the commission said you must not charge any more on interstate traffic, distance considered, than you do on Texas traffic, would remain in effect until a court had held the Texas rate unreasonable.

Senator CUMMINS. I should like to know whether the attorneys on the other side agree to that construction.

Mr. MORGAN. I think it has been correctly stated, as far as I know. It was the intention of this bill not to abrogate the authority if the Interstate Commerce Commission finds it necessary to remove a State rate, or to interfere with a State rate in order to protect the interstate rate, that before they can remove any State rate, that the reasonableness of that State rate must be passed upon.

Senator CUMMINS. That is, you agree that the bill does not affect the jurisdiction of the Interstate Commerce Commission?

Mr. MORGAN. Yes, sir.

Senator CUMMINS. To hear and determine, but modifies the time of the effect of the order. In other words, it can not go into effect if it is to set aside a State regulation until a court of competent jurisdiction has declared that State regulation to be unreasonable?

Mr. MORGAN. That is it.

Senator CUMMINS. You both agree to that?

Mr. WALTER. Yes. Now, the act to regulate commerce fixes the time limit of orders at two years, and we will say they have ordered the discrimination to be removed; they have found the rate charged within the State is unreasonably low; they reduce the interstate rate to a reasonable basis; the order requires the carriers to remove the discrimination by leveling the rates. What happens? That

order does not become effective until a court of competent jurisdiction says the State rate is unreasonable.

Now, under the decisions I have shown no court has power, or has ever exercised the power, to hold that any particular rate is unreasonable. We have an impossible condition precedent to having our order becoming effective. Now, if it were the entire schedule of rates——

Mr. MORGAN. Let me ask you a question there for information. In the Arkansas-Missouri-Minnesota case, where Judge Trieber filed what was known as the court tariff, did not the Supreme Court in that case say that those rates were unreasonable and that the carriers must charge the Arkansas-Missouri-Minnesota intrastate rates?

Mr. WALTER. They said that the carriers had not proved what they alleged, so that put it back and the State-made rates became effective. That is all there was.

Senator CUMMINS. I should like to ask one other question. Suppose that in the cases you are now presenting that the Interstate Commerce Commission, having made its order, which without this statute would have the effect of annulling the rate made by the Texas commission, the order is suspended, it is not operative until something else happens. Suppose then that one of the railroads affected resorts to a court of competent jurisdiction, and the judgment of the court is that the Texas rate is unreasonable. I will assume it can do that. The effect of that is to send it back to the commission. Now then, will the order of the Interstate Commerce Commission then become instantly operative, no matter what the Texas commission does, as to modifying the rate in any way?

Mr. WALTER. As far as this act goes that question is unanswered. The Interstate Commerce Commission, as a matter of fact, in all such cases gives ample time, postpones the effective date of its orders, and gives all parties every opportunity to present anything they may wish.

Senator CUMMINS. That is not the question I had in mind. A rate is fixed by the Texas commission now, and the Interstate Commerce Commission has held that it is discriminatory and should be annulled. Thereupon a railroad company resorts to a court, and the court finds the rate is unreasonable. Will the order of the Interstate Commerce Commission then operate, or can the Texas commission go on and fix another rate, and must the same proceeding be had with regard to the further rate?

Mr. WALTER. That would undoubtedly be true, because the commission only acts on the rate which the court acted upon.

Mr. MORGAN. That was done in the Arkansas case when Judge Trieber's court order was nullified; then the carriers filed another tariff in that particular case, and that tariff was subject to review by the State commission, and also subject to review by Judge Trieber. In filing the second tariff against the Frisco Railroad, Judge Trieber said to the Frisco Railroad, "This tariff is too high, and I will put these rates back on the old court tariff again until you rearrange another tariff." And he did do it in that proceeding.

Senator CUMMINS. That is not a parallel to the question I put. I will make it concrete, because I think it is vital so far as this bill is concerned.

Suppose that one of the Texas railroads had brought its suit after the order of the Interstate Commerce Commission, and the court which it resorted to had held the rate to be unreasonably low. Suppose the rate had been 20 cents per 100 pounds and the court held that to be unreasonably low; it goes back to the commission, to the Texas commission, and the Texas commission fixes it at 19 cents. As I understand it, the Interstate Commerce Commission's order is still inoperative?

Mr. WALTER. Surely.

Senator CUMMINS. Then the railroad must resort again to the court and attack that rate, and we will assume that the court will hold that to be unreasonably low, or suppose it fixed it at 21 cents, that would be the proper presumption. And so on, until the Texas commission had fixed some rate which the court refused to overthrow, and then, of course, this bill would apply. Now, the effect of that, then, is, I assume, to deprive the Interstate Commerce Commission of any jurisdiction over that rate?

Mr. HAINES. Over a State-made rate, absolutely.

Senator CUMMINS. Then why do you not put it so squarely, if that is the point you intend to raise?

Mr. HAINES. It is already in the act, Mr. Senator.

Senator CUMMINS. Not according to these decisions of the Supreme Court. That is the point in this bill that vexes me, and some time or other, I do not want to interrupt the argument of Mr. Walter, but I want to call his attention to that point in this bill that I have not been able to solve.

Mr. MORGAN. Mr. Walter can not cite you to a single case, neither can I, where a railroad company has attacked a State-made rate, without filing some rate in lieu of that rate. That is what they do when they go into these courts.

Senator CUMMINS. You know we are not legislating for Texas alone. This bill is general. In most of the States the railroads do not file any—I will not say in most, but a great many of them do not file any tariffs at all. Their rates are fixed by State commissions; they are absolutely bound by them until the court intervenes.

Mr. HAINES. If the rates fixed by the State commissions are enjoined, then the railroads file tariffs of their own making.

Senator CUMMINS. Not in our State at all.

Mr. HAINES. That is the way they have been doing in Texas.

Senator CUMMINS. They do that with the Interstate Commerce Commission, but the railroads do not do that in our State unless they want to make a rate below that of the commission, because we make all the rates there.

Mr. MORGAN. I had in mind, and I think we all had in mind in this particular bill here, that if these rates were attacked, or if the railroads assumed to think the rate that the railroads themselves——

Senator CUMMINS. What I wanted to find out was whether you understand finally, under legislative decree, that the Interstate Commerce Commission should not, under any circumstances, interfere with a rate or a practice wholly within a State?

Mr. MORGAN. That is our idea.

Mr. BYARS. That is it, exactly.

Mr. WALTER. The act does not bring that out, but the effective operation of it would approach that closely, because prolonged litigation would make impossible any action by the commission.

But here is another decided objection to this bill. The carrier must get the judgment. Now, in many instances it is a fight between communities and carriers, one carrier wanting to build up one place on its line, while another carrier wants to build up another, or where all carriers want to build up one town.

Now, take Texas; you can not find in that Commonwealth a corporation of another State engaged as a common carrier. The Texas & Pacific road is a Federal-chartered road engaged in business in that State, and in two of the lines there is written into the charter—the Cotton Belt and the Missouri, Kansas & Texas—that no preliminary injunction will be sought against any rate of the Texas commission or the Texas Legislature. And what does that do? That compels every other carrier to take the same attitude, because if the Cotton Belt and the Katy, that circulate through all that territory, have a lower rate, they will get the business and other carriers would not get it; therefore the whole effect of it is to compel those carriers, willy-nilly, to maintain the status fixed by the State commission in the way of rates. But nobody yet has told you that these very rates which we have complained of have been raised 10 per cent in the last month by the State of Texas on all classes except fourth class, and that they have raised 5 per cent. So, as the result of the hearing they have had, they admit their rates have been too low for the carriers and ought to be raised.

Mr. HAINES. They suspended that.

Mr. WALTER. They suspended as to its effective date. And another thing, during the progress of the case; as to various commodities, the State commission kept handing down decisions and telling the carriers they were going to give them advances in this commodity, and that, and just before the effective date came about they postponed the date when the increases in rates should become effective. In other words, no man can read the record of the commission of the State of Texas and not reach the conclusion that they played fast and loose with the carriers in that State. There is not another State in the Union, that I know of, that has any such condition of affairs. You are investigating a great problem for the United States, and the facts you will get relate only to that State. You have got to know what the situation is in the other 47 States, and know what the situation is before you apply any remedy of this sort.

They say the purpose was to take away from the Interstate Commerce Commission the power to compel the carriers to remove a discrimination against interstate traffic. My experience before the commission the last five years shows there is scarcely a case of any magnitude that does not involve the relation of the State rate to the interstate rate. It must be met; it must be solved; it is involved in this case; if Senate resolution 60 passes and you can make the survey that ought to be made, thorough and complete, you will reach some solution of that $35 case of Mr. Haines whereby it can be handled, and I believe that the intelligence of the carriers and of the shippers of this country can solve these problems. It is of little importance what authority employs the men who do the solving whether they wear the livery of State or Nation. And we have got

to take out of consideration any crazy notion about the rights of States and the sacredness of the old methods. The thing to do is to apply to transportation, which has become national in its effects, national in its conditions——

Senator CUMMINS. Mr. Walter, as I understand it, we could not broaden in any way the jurisdiction of the Interstate Commerce Commission. We have it as broad as the Constitution will allow it, so far as the railways are concerned.

Mr. WALTER. No, sir; I do not read the Shreveport decision of the Supreme Court as being the constitutional limit of action by the commission.

Senator CUMMINS. But you are speaking about finding some solution by which we can broaden the jurisdiction of the Interstate Commerce Commission. We can not do that; we have got it now up to the limit of the Constitution.

Mr. WALTER. I am speaking now of the administration of the act to regulate commerce, so that instead of having these conflicts and having the State commissions pass on these rates in the State—there is no such thing as a purely intrastate rate on an interstate carrier. They touch or come together in some way or another, because you can not separate the revenues and the cost between State and interstate. It is impossible to solve with exactness and to weigh and apportion between the two classes of traffic.

Senator CUMMINS. That is simply saying that under the present law the Interstate Commerce Commission can make State as well as interstate rates?

Mr. WALTER. That is true; but the difficulty Mr. Haines has pointed out arises from the fact that the present machinery of the Interstate Commerce Commission, or organization, is such that the shipping public cannot seek its jurisdiction without the greatest expense and inconvenience.

Senator CUMMINS. I did not understand that. I thought you were speaking about the power.

Mr. WALTER. No; the power is all there, but I do think, without any loss to the State commission, that you could give every rate to the Interstate Commerce Commission, or to a subordinate tribunal, grouped not by artificial State lines, but grouped according to transportation conditions, and that with your half dozen or dozen of those tribunals, close to the shipper and close to the carrier, with one commission here to see, as under the patent laws that the patents in one district are recognized in others, that you could give a uniformity of regulation so that there would be no ground for complaint as between communities, and no ground for complaint as between carriers. I think that is the great problem you have got to solve.

As to the difficulty with the Interstate Commerce Commission. It has been criticized here to-day; that criticism arises from the fact that it is physically impossible for the Commissioners individually to-day to do the work without calling in to their assistance a host of others. And we have got to accept their work; we have got, at least, to be a little charitable with the commission. It may make mistakes, but I have no sympathy with the harsh criticism which has been voiced of the commission, and I want here in this record to testify before this committee that the shipping public—shippers and carriers—hold the Interstate Commerce Commission in highest regard and confidence—as efficient public servants.

Senator BRANDEGEE. Do you think the Interstate Commerce Commission has authority now to fix the rate between Dallas and Houston, say?

Mr. WALTER. It has the right to fix that rate not per se, leaving out everything else. But let me give you an example in our Shreveport case, because that question is right there. Shreveport ships to Dallas; Houston ships to Dallas. Unless the rate from Shreveport to Dallas, distance considered, is on all fours with the rate from Houston to Dallas, you will have discrimination, and so between every point in the State of Texas. We are asking the Interstate Commerce Commission to establish by order no higher rate, distance considered, on the interstate movement than in any direction on the lines of the defendant for the same distance wholly in Texas.

Senator CUMMINS. That is because it affects interstate commerce?

Mr. WALTER. Yes, sir.

Senator CUMMINS. But do you assert that the commission could now fix the rate on a crate of watermelons, traveling 20 miles to a local market?

Mr. WALTER. No, sir; not without the premises and finding that there is a relation that must be just and lawful between the interstate rate and the State movement.

Senator CUMMINS. Precisely; but I understood you to say a moment ago, however, that you thought that the whole subject of all rates, interstate and intrastate, were already in the hands of the commission?

Mr. WALTER. And when I followed up what I just stated to you a moment ago as to the relation with the further statement that there are no two rates on any article that are not related one to the other on the railroad systems of the United States, then you reach the conclusion that all the rates are——

Senator CUMMINS. Then do you say, in the case I put, the shipment of a dozen watermelons 20 miles to a local market, where that market is not receiving any watermelons from outside the State at all, that the rate could still be fixed by the Interstate Commerce Comsion?

Mr. WALTER. Yes; because the man there might want to buy watermelons. Take steel articles——

Mr. HAINES. No; take watermelons. That is a good Texas product.

Mr. WALTER. As a matter of fact, in the Shreveport case we paid on a car of watermelons $90 more from Brownsville to Shreveport than Texarkana, which hauled right through Shreveport.

Senator CUMMINS. I put to you an individual case. Now, if you are right about that, then this State commission, so far as rates are concerned, at least, is eliminated entirely?

Mr. HAINES. Absolutely gone.

Mr. WALTER. Whenever the Interstate Commerce Commission finds, as a matter of fact, the unjust discrimination existing there——

Senator CUMMINS. That has been held by the Supreme Court, but I am putting you a case in which there is no discrimination.

Mr. WALTER. If there is no discrimination, then they can not fix the rate, but I say that in the ordinary course of traffic in this country there is always the relation of rates, because you have either the producer or the purchaser or the consumer at one point or another who is interested directly in the rate in the same article between two other points, each of which reaches a common point.

Mr. BYARS. What about rates on commodities that do not move to or from Shreveport, but do move between points in Texas?

Mr. WALTER. There is not a commodity produced in any manufacturing city, with rare exceptions, that is not produced at Shreveport, or that Shreveport desires to produce, nor is there a raw material produced in the State of Texas that is not, in some degree, bought and consumed, or further manufactured at Shreveport. That is what the Shreveport record shows.

Senator CUMMINS. Then you would likewise hold that in case of an electric railway—I will take a case in my own State, from Davenport to Rock Island, across the Mississippi River. Of course the Interstate Commerce Commission can fix the rate on that line. Now take the electric line in my own town, where it does not pass from one State to another, could they fix the rate on that, too?

Mr. WALTER. Take Muscatine to Davenport?

Senator CUMMINS. Yes.

Mr. WALTER. And you have got Rock Island to Davenport. There you have got the carrier serving an interstate line. It is the same electric line. You can not found an order of discrimination against a carrier unless it serves both points.

Senator CUMMINS. You are not inserting, of course, the condition of discrimination?

Mr. WALTER. Well, without the discrimination they can not do it.

Mr. HAINES. But you always find the discrimination.

Senator CUMMINS. You say that all traffic is so related, either passenger or freight, that there may be discrimination in all forms of traffic, or is discrimination if the rates are different and the conditions are similar?

Mr. WALTER. That is certainly so, Senator, when there is a body of traffic of any appreciable moment. That is correct.

Senator CUMMINS. Why not take the next step, then, if that is your view, and say that this bill in unconstitutional?

Mr. WALTER. No, sir; not unconstitutional, because——

Senator CUMMINS. Can we withdraw from the commission and allow the States to regulate commerce among the States?

Mr. WALTER. Yes, sir; you will recall, Senator, there is a division of cases. Nevertheless, the Supreme Court says interference with interstate commerce is not unlawful, because the Federal Government has not yet spoken.

Senator CUMMINS. But the Government has spoken?

Mr. WALTER. Yes, sir; but when it unspeaks and repeals and gives back it is as though it had not exercised any power, or you can say that any particular body may be your agent in doing certain things, and you could say to the State commission that they shall be the agents of the Congress in doing certain things to State railways. In other words, you may create any organization.

Senator CUMMINS. I do not doubt that part of it.

Senator BRANDEGEE. Let me ask you about this question of Senator Cummins, which he asked you a while ago, and see if I understand it. This bill says, to make it very brief:

> Nor the exercise of any authority by the Interstate Commerce Commission, etc., shall absolve any railroad or other common carrier, etc., until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate to be unreasonable.

That seems to me to go upon the ground that at present the act of the Interstate Commerce Commission does absolve the railroad from the rate fixed by the State's authority, and that the purpose of this act is to provide that it no longer shall be absolved from the State rate, except under the judgment of the court that the State rate is unreasonable. You say they can not get the judgment of a court that a single rate is unreasonable, but let us assume that they could and did. Then it seems to me that instead of a State commission having authority to immediately establish another rate, that the act of the Interstate Commerce Commission, which would have taken effect except for the judgment of the court, may be in effect, and I wanted to ask you whether you thought that if this act was not passed and the Interstate Commerce Commission makes an order which is contrary to the order of a State commission on a shipment which is intrastate, whether the State commission is already now ousted of jurisdiction?

Mr. WALTER. It is now ousted of jurisdiction the moment the Interstate Commerce Commission fixes an effective date for an order which finds an unlawful discrimination, and that the interstate rate is just and fixes the interstate rate as just and reasonable.

Senator BRANDEGEE. If that is true, then it seems to me we have admitted already that the Interstate Commerce Commission is fixing intrastate rates.

Mr. WALTER. Yes, sir; it is. The court has said so, and that is the trouble with all these gentlemen in Texas. They do not want the State rates of Texas, which they themselves voluntarily have raised 10 per cent within a month, because of a sense of pride—that is all there is to it.

Mr. HAINES. That is unjust to say that, Mr. Walter.

Senator BRANDEGEE. If what you say is so, I do not quite see the force of the plank in the Republican platform recommending as it does. But I will not interrupt you any further.

Mr. WALTER. The natural effect of the present law is, to all practical purposes, to put under the jurisdiction of the Interstate Commerce Commission the State rates on important commodities, where the carriers are engaged in handling State and interstate traffic.

Senator CUMMINS. That is not quite from my standpoint an accurate statement of the decision or opinion of the Supreme Court. As I understand the opinion of the Supreme Court it is this: That where a State rate or regulation is so indissolubly and inseparably connected with an interstate rate or regulation, so that the two can not exist without the proper relation between them, that then the State rate becomes an interstate rate and falls within the jurisdiction of the commission.

Mr. WALTER. As Commissioner Prouty put it, it does not make any difference which one of the shears does the cutting, the State or interstate.

Senator CUMMINS. I was speaking of the decision of the Supreme Court.

Mr. WALTER. Let me then state that. The Supreme Court has held that the Interstate Commerce Commission has the power, when it finds affirmatively that the State rate unjustly discriminates against the interstate rate, to require the carrier to remove that discrimination.

Senator CUMMINS. That is upon the ground, as stated first in the Minnesota case, that the State rate so intimately affects the interstate rate that it falls within the jurisdiction of the commission that is given the power only to fix or regulate interstate rates.

Mr. WALTER. And they are so intimately related, so close, as to make any difference in the amount of the rate with no difference in transportation conditions unjust discrimination.

Senator CUMMINS. I can conceive a good many points of contact, but after all, the principle laid down is that a State rate which has that effect upon communities, or upon interstate traffic, is no longer a State rate but an interstate rate.

Mr. WALTER. That is the effect of it if you want——

Senator CUMMINS. That must be the case, because we have no authority to regulate intrastate traffic.

Mr. WALTER. Only to the extent necessary to secure absolute and complete freedom to interstate traffic. Take the safety-appliance act, for instance. To-day on the railroads of this country not a car can be hauled that does not comply with the Federal standard, even though it be hauling traffic wholly within the State. That is done to protect the men and the highway.

Senator CUMMINS. It has not gone that far, and even that far is not put into intrastate trains.

Mr. WALTER. Yes, sir; I will give you a reference to the case. Justice Van Devanter delivered the opinion, and he said if the car ran on a highway which was a highway for interstate commerce it must comply with the Federal requirements.

Senator CUMMINS. What decision is that?

Mr. WALTER. It is the case of the Southern Railway *v.* The United States; Mr. Thom's case.

Mr. MORGAN. Do you mean to say that a road running wholly within one State and not going out to another State, the movement is within the jurisdiction of the Interstate Commerce Commission?

Mr. WALTER. Yes, sir; if over that highway traffic from another State moves.

Senator CUMMINS. Will you give me a reference to that decision?

Mr. WALTER. It is the case of the Southern Railway against the United States, reported in Two hundred and twenty-second United States Reports.

Senator CUMMINS. You may be right with regard to it. I confess that I do not keep very well posted with respect to these decisions.

Mr. WALTER. There is no question about that. I will find it when I conclude.

To sum up my objections to this bill, in the first place, it places the determination of what is a lawful rate in the hands of a court. They have all washed their hands of rate matters. They say we do not know anything about it. The Supreme Court of the United States says as to the Interstate Commerce Commission [reading]:

> Here is a body with years of experience whose business it is to make these matters conform to law and justice. If they had any substantial evidence before them and if they followed the forms of the statute, we will not interfere.

Senator BRANDEGEE. Let me ask you a question right there. I do not know that it is pertinent at all, but have the courts jurisdiction of such a suit; can you bring a suit in a court alleging that a rate is unreasonable?

Mr. WALTER. You can not.

Senator BRANDEGEE. Simply by saying it is confiscatory.

Mr. WALTER. Only as to a body of rates does such jurisdiction lie in any court.

Senator BRANDEGEE. If the court has no jurisdiction, then an act which provides for getting a judgment from a court which has no jurisdiction is brutum fulmen.

Mr. WALTER. Exactly; it does not amount to anything.

Senator BRANDEGEE. The Federal act certainly would not give a State court jurisdiction.

Mr. WALTER. No, sir; except this, that the court may have jurisdiction as to its being unreasonable if by that they mean confiscatory and speak of the whole schedule of rates, but so far as determining whether a rate on buggies ought to be 25 cents or 27 cents, no court ever exercised any such jurisdiction. It is not a judicial function; it is legislative.

Senator BRANDEGEE. I was thinking if you brought a complaint against a railroad company to declare a rate unreasonable, what complaint you could make except it was unreasonable and stop there.

Mr. WALTER. The court says they do not have jurisdiction of this unless it is confiscatory—that is the whole scale. In the second place, the courts themselves do not want this jurisdiction.

The CHAIRMAN. You contend that the court can not act upon a single rate as confiscatory of property?

Mr. WALTER. No, sir.

Senator BRANDEGEE. Or object as confiscatory?

Mr. WALTER. Or object as confiscatory. But as a practical matter you can not show that a single rate is confiscatory unless in the case of mines where ore is all the business of the road.

Senator BRANDEGEE. That is one single rate?

Mr. WALTER. Yes, sir; that is the proposition. Now, I go further. If you want to have somebody review the Interstate Commerce Commission act, make an appellate interstate commerce commission; create a body that is an administrative tribunal to make and do administrative work and issue orders. That would be the practical way. Do not put it in the hands of a court—we know the expense of that—and another thing, do not leave it to the carrier only to invoke the determination of the reasonableness or lawfulness. Give the shippers some chance.

Senator BRANDEGEE. Are you advocating the reestablishment of the Commerce Court?

Mr. WALTER. I am very strong for the Commerce Court. I think it was a mistake to have abolished it. I think a special tribunal that has familiarity with these matters should be the one to pass on them.

Now, the effect of this statute is to take from the commission the jurisdiction it ought to have; secondly, that there is no possibility of obtaining an affirmative holding that any rate or schedule or practice is unjust or unreasonable, and that as a result of that you would have no possible relief in any action which the Interstate Commerce Commission might take. It is a blundering, cumbrous piece of legislation, the purpose of which, frankly admitted, is to take from the commission the power to do the right thing.

Senator BRANDEGEE. When was it that the National Association of Railroad Commissioners passed the resolution upon which this act is patterned?

Mr. WALTER. In 1914, I think.

Senator BRANDEGEE. Has there been any action taken by them since that time?

Mr. WALTER. None at all. I think it is only fair to say that the average railroad commission welcomes the efforts of the Interstate Commerce Commission to iron out inequalities between the States, the Louisiana commission in this case is a plaintiff; in the Natchez case it is defendant, but you will have always the interests of States divided, as the course of traffic is first going in one direction and then going in another, and there must be some final arbiter. The country has confidence in the Interstate Commerce Commission's ability; you must continue to appoint men on the commission who know what they are about, and are able to do it, and no petty circuit court in the State of Texas, or any place else, should have the right to assert any opinion in the face of the action of the Interstate Commerce Commission as to what is a just and reasonable rate.

Mr. HAINES. You are quite correct when you state we ought to appoint men who are able to do it. That is our objection. The Interstate Commerce Commission is not able to take care of this situation as the courts would say they have a right to do.

Mr. WALTER. But no court with the jurisdiction or with the power to find that a State rate is unreasonable as a condition precedent to the Interstate Commerce Commission's order becoming effective, we contend, will give any better solution to our traffic problems by reason of the passage of the Sheppard bill.

Mr. HAINES. No; but a State commission that is on the ground will and can; and the Interstate Commerce Commission way up here can not.

Mr. WALTER. Well, I have shown that the State Commission of Texas purposely has destroyed and kept down the traffic between Shreveport and Texas, and we can not leave to that commission the fixing of the rates.

Mr. HAINES. No; we do not want to.

Mr. WALTER. I thank you, Mr. Chairman, and gentlemen

The CHAIRMAN. The committee will now hear Mr. Atkins.

STATEMENT OF GEORGE T. ATKINS, JR., REPRESENTING THE SHREVEPORT CHAMBER OF COMMERCE, SHREVEPORT, LA.

Mr. ATKINS. Mr. Chairman, as has been stated here to-day, I have been in this Shreveport rate case ever since the first petition was filed, and am still in it, and am going to stay in it until it is finished.

As I see this proposition it is not so much a case of whether or not the Interstate Commerce Commission is going to regulate intrastate rates, but whether or not the State commissions are going to be permitted to regulate interstate rates. In the particular case which has occupied so much of the discussion to-day, unquestionably the Texas commission has undertaken to regulate interstate commerce. To our certain knowledge they have regulated us out of over 100,000 bales of cotton per year from east Texas, the testimony under oath showing that one firm will handle as much as 30,000 bales, which action the Texas commission has absolutely prohibited.

Under date of September 30, 1902, Chairman Reagan, of the Texas commission, wired E. L. Sargent, of Dallas, General Freight Agent Texas & Pacific Railway:

> Concentration of cotton at Shreveport from Timpson and Longview and intermediate stations is wrong—unless stopped at once rates will be reduced to Houston. Answer by 4 o'clock to-day. Same has been sent to W. H. Taylor.

W. H. Taylor being the general freight agent of the Houston East & West Texas.

Now, how do they propose to regulate the interstate rates? They can not touch the rate from Longview and points on the Texas & Pacific to Shreveport, but they say if you continue concentration of cotton at Shreveport we will reduce your rates to Houston and Galveston. Needless to say, cotton was not concentrated at Shreveport farther.

On October 20, 1902, Commissioners Storey and Mayfield, of the Texas commission, wrote an identical letter to General Freight Agent Taylor, of the Houston East & West Texas; Allen, of the Missouri, Kansas & Texas; Haile, of the Texas Southern; Lehane, of the St. Louis Southwestern; and Perkins, general freight agent of the Texarkana & Fort Smith Railway, as follows:

> GENTLEMEN: After a very full hearing on the matter of concentration of cotton into Shreveport from points in east and northern Texas, this commission believes that such concentration is unjust to the interests of this State, and it therefore requests that such concentration be discontinued.
>
> If this request is not complied with, we shall feel compelled to reduce the rates from east and northern Texas to Houston and Galveston.
>
> We will await your reply until Thursday, October 23, at 10 o'clock a. m.

Well, they did not have to wait for a reply. They were called up on long-distance telephone and told that the cotton concentration at Shreveport would be discontinued.

So clearly it seems to me that this is a proposition of not whether the Interstate Commerce Commission is going to regulate intrastate, but whether the State commissions can be permitted to regulate the interstate as they have heretofore done in these particular instances.

There are many other illustrations of how the Texas commission has sent telegrams of that nature and of later date.

Mr. Walter has covered the matter as shown in their reports. These telegrams that I have read are only a few of the many similar telegrams and letters that were sent as to whether or not cotton could be concentrated at Shreveport and describing in a general way the other classes of business that might be done there.

The CHAIRMAN. What do you mean by the expression that cotton is "concentrated" at Shreveport?

Mr. ATKINS. It is shipped from Texas into Shreveport; it is there marked, classed, sampled, or compressed. It is more or less of a transit privilege.

The CHAIRMAN. Was it the aim of the Texas commission to have that work done in Texas?

Mr. ATKINS. Absolutely; and they carried their aim out to the letter.

Senator BRANDEGEE. Have you the Texas statute here describing what their State commission shall do in the way of regulating Texas railroad rates? If not, and if any of the attorneys here have them, I wish they would put them into the record.

Mr. WALTER. It is very voluminous. We have this emergency act here.

Senator BRANDEGEE. What you claim the Texas Railroad Commission has been doing, as I understand it, is, instead of fixing just and reasonable railroad rates, with an eye single to that, they have been regulating their Texas railroad rates so as to improve and give an advantage to Texas business interests as against those of the adjoining States.

Mr. ATKINS. Absolutely, and without any regard to whether the rate they fixed in Texas was a reasonable or unreasonable rate per se. The movement of cotton from Longview to Shreveport being directly eastward; the movement from north Texas to Houston and Galveston over some lines that were not even mixed up in the haul from Longview. There they simply held this club over the Texas lines and said without any question, "If you do not do this, we will reduce your rate in other directions."

Prior to my present connection with the Shreveport Chamber of Commerce, for a period of about 10 or 14 years, I was connected with one of the Texas railroads, the Missouri, Kansas & Texas, in my later capacity as chief clerk in charge of their traffic, and I believe I can say it without any fear of contradiction that my experience with that line is somewhat broader than any of the other Texas gentlemen who have submitted statements this morning, and I know what the attitude of the Texas Railroad Commission is. We were given time to adjust the rates on sash doors and blinds, for instance, to suit the Texas Railroad Commission. We were powerless to do so, because we had the California sugar pine to contend with, and we were unable to get the transcontinental lines to advance their rates, and the Missouri River manufacturers at Clinton and Dubuque must be kept on a parity with California, so we could not make that adjustment. What was the result? We called up the commission and told them they would have to act; that we could not get the transcontinental lines to advance their rates, and therefore we could not advance ours. You get your 7-cent window glass between all points in Texas for 900 miles over four lines.

Now the Interstate Commerce Commission under the Federal act only has power to fix a reasonable rate; that is, to remove discrimination.

Mr. WALTER. And then only after full hearing.

Mr. ATKINS. After full hearing, and the Texas commission does not have to have a full hearing to put in their emergency rate. It is simply under an emergency law which has been passed declaring it an emergency rate. Before they became more guarded in their official orders they would say, "Because of the rates on wire and nails from St. Louis to Paris, Tex., we hereby declare an emergency and establish a maximum rate of 25 cents between any points in the State of Texas." That rate is still in effect, although the cause has been removed long ago. The rate from St. Louis to Paris was modified years ago, but the 25-cent rate on wire and nails, put in as an emergency rate and applicable to any portion of that haul, still remains. The Interstate Commerce Commission can not do that. It can only, after full hearing, fix a just and reasonable rate. Where the Interstate Commerce Commission fixes a just and reasonable rate what relief is it to a manufacturer of window glass at Shreveport in competition with a factory at Texarkana, Tex., only 72 miles away from us? What relief is it to us if the Interstate Commerce Commission is

only empowered to say, "We declare 24 cents to be a reasonable rate on window glass from Shreveport to Texas," and it is powerless to remove this discrimination which the Texas commission has created for that very purpose?

The CHAIRMAN. I understand your claim is that the railroad commission in Texas is not endeavoring so much to fix just and reasonable rates of transportation as to declare and enforce public policy with reference to the protection of Texas business and industry and the maintenance of certain potent places for manufacture and transportation, and that it is really a protective system instead of an administrative system for adjusting the expense?

Mr. ATKINS. I believe the Texas commission would fix what it held to be or thought to be just and reasonable rates on commodities except that where they feel there is any necessity with respect to that commodity for a lower rate I do not believe that they longer consider whether the rate is just or reasonable. I can recall, during my connection with the Missouri, Kansas & Texas Railway, that they issued an emergency rate on bran carloads of 2½ cents per hundred between any common points in the State of Texas. Now no one can contend that that is a reasonable rate nor that it is a fair rate. It was not aimed at Shreveport; it was aimed at the system north of us in Kansas and Oklahoma. But what is the effect? It shuts out all interstate traffic, be it Louisiana or Arkansas or what not?

Mr. HAINES. What was the interstate rate on bran at that time?

Mr. ATKINS. It was nothing like 2½ cents.

Mr. HAINES. Was it not, as a matter of fact, 5 cents?

Mr. ATKINS. I do not think it was.

Senator BRANDEGEE. Are the orders of the Texas commission final and conclusive; is there no court review?

Mr. ATKINS. As Mr. Walter has explained, there are two railroads, the Missouri, Kansas & Texas and the Cotton Belt. The Missouri, Kansas & Texas is approximately 2,000 miles in Texas——

Mr. BRENT. Oh, no.

Mr. HAINES. It is 600 or 700 miles.

Mr. ATKINS. Well, it is 400 miles from Dallas down to Galveston, and that is only part of the main line. The Texas lines of the Katy are approximately 2,000 miles, as I have just stated. Those roads, in their charter provisions, as Mr. Walter explained, are not able to enjoin these commission orders. They reach all the populous section of Texas. The net result is that the other roads can not enjoin the orders because, if it were done, then the Missouri, Kansas & Texas and the Cotton Belt would secure all of the low-rate business.

We succeeded, back about 1905, I think it was, in getting a temporary order against a cotton piece-goods rate from Galveston to Texas points which the commission had declared an emergency rate of class B, and the Missouri, Kansas & Texas and the Cotton Belt had to get out of it; so had all the other lines. They could not afford to let the Missouri, Kansas & Texas and Cotton Belt handle that business for 43 cents when they had to charge 49. So the practical effect, so far as Texas is concerned, as I see it, is that there could be no appeal even to this court of competent jurisdiction if it were definitely fixed.

Mr. WALTER. But periodically they begin suit against the carriers to recover immense penalties, and they will settle for $25,000 and hold the balance of the suit in abeyance, and they have to dance whenever the State commission fiddles.

The CHAIRMAN. I have heard it said that the policy of Texas has been to maintain four or five jobbing centers about equal in prosperity and population, and that they have steadily resisted any policy that would mean the concentration of the population of wealth in any particular city, as we find in most Commonwealths. Does the railroad policy run in that direction?

Mr. ATKINS. That certainly is not the railroad policy. True to all business principle, good railroad men try to build up the territory on their lines. Probably they could do it—it is nothing more than good business to do it—at the expense of some other line but not at the cost or expense of other towns on their line nor at the expense of a portion of the State that the various lines serve.

The CHAIRMAN. Do you not think that the comparative quality of those four or five or six cities in Texas is due not to the policy of the commission of fixing transportation rates but to the rivalry of the railroad systems with each other, each endeavoring to maintain a prosperous center on its line?

Mr. ATKINS. No, sir; I do not believe that is it. I think the citizenship of Dallas, Fort Worth, Houston, and Galveston especially have built those towns. The Texas rates, as has been explained, are mileage rates.

The CHAIRMAN. But that is not the result of any public policy on the part of the State or commission?

Mr. ATKINS. No, sir; because the small town has identically the same rate as the big town. They have a mileage rate, and whether you pick a blind siding or the most populous town the rate for a given distance is the same and the inbound rate from interstate points is the same.

Senator BRANDEGEE. Do you not think it is about time for you to exercise your constitutional prerogative and divide up into five States?

Mr. ATKINS. Senator, you have me confused with someone else. I am not from Texas. I think it ought to divide up. I am pleased to say that I spent the best part of my life in Texas, until six years ago, and I hope to get back there some day.

There is just one other point that I would like to mention briefly and I do it because I believe it is due the Railroad Commission of Louisiana, which I represented in this proceeding as their traffic man, and that is the suggestion that there has been any sort of a tentative agreement about the basis of rates that were submitted the Interstate Commerce Commission. As Mr. Walter has explained, this record does not show all the people who were at this hearing. They employed counsel. State Senator Carter, of east Texas, represented all the east Texas interests at the original Shreveport hearing.

Mr. WALTER. And joined with us.

Mr. ATKINS. And joined with us. They did without exception. At the supplemental hearing there were two members of the Railroad Commission of Texas present, Chairman Mayfield and Commissioner Williams, who is the father of this resolution in the American Association. It was suggested openly, and is now a matter of record, that to facilitate the work of the Interstate Commerce Commission the

complainants and the defendants get together on as many of the rates as they might. Now, that was done. It was submitted to the commission as being what we thought was a fair scale of rates as might be expected. There were rates that we did not get together on at all. We went to the commission with a statement of the defendant's views on these rates, and with a statement of our views. There was no harmony at all. There were others that we did get together on that I, as a traffic man with experience in Texas, was thoroughly familiar with, and I thought it was a fair and reasonable basis, and I am proud to say that with respect to some commodities I was able to agree with the carriers as to what would be a just, reasonable, and fair rate. Some of those rates are higher than the present Shreveport rates and some are lower.

Mr. MORGAN. May I ask a question for information? Were any of the traffic boys in the cities of Texas invited to that particular meeting to which you refer?

Mr. ATKINS. They were not invited, but the matter was absolutely public, as was the agreement that was submitted to the commission. The letter is a public document.

(The letter referred to is here printed in full, as follows:)

RAILROAD COMMISSION OF TEXAS,
Austin, Tex., July 26, 1916.

CIRCULAR NO. 5048—NOTICE OF HEARING.

Notice is hereby given to all railroad companies and receivers operating lines of railroad in this State, and to all other interested parties, that the Railroad Commission of Texas will, on Friday, August 11, 1916, at the Hotel Galvez, in Galveston, Tex., take up and consider the matter pertaining to freight rates on cotton in bales, any quantity, transported by railroads between points in Texas, with the view of ascertaining what differential, if any, should be maintained on cotton from points in Texas to Texas ports under the rates on cotton maintained by interstate carriers from the same points in Texas to New Orleans, La., and with the further view, such interstate rates considered to ascertaining proper rates to apply on cotton locally between points in Texas.

The commission will, at said hearing, hear all facts and statements that may be presented pertaining to the matter above set forth, and will in pursuance thereof make such readjustment of rates to apply on the commodity named, transported by railroads between points in Texas, or will enter such other order or orders in the premises as, in its opinion, may be just and proper and as may be equitable to all interests concerned.

ALLISON MAYFIELD, *Chairman*,
WILLIAM D. WILLIAMS,
EARLE B. MAYFIELD, *Commissioners*.

Attest:
E. R. MCLEAN, *Secretary*.

I hereby certify that the above is a true and correct copy of Circular No. 5048 this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of said commission at the city of Austin, this the 26th day of July, 1916.

[SEAL.] E. R. MCLEAN, *Secretary*.

Mr. ATKINS. The Fort Worth interests appeared in that case and cross-examined. They were given access to all of these tariffs.

Mr. MORGAN. I want to ask a question for the information of the committee. Did you make any effort to have any of the Texas traffic boys, representing the Texas cities, present at that tentative agreement that you spoke of?

Mr. ATKINS. I did not. It was not my place to.

Mr. BYARS. You got together on most rates, did you not?

Mr. ATKINS. We did.

Mr. BYARS. But you did not make any effort to get most of the boys present?

Mr. ATKINS. No, sir.

Senator CUMMINS. This proposition is a general one, but there seems to be rather a peculiar condition down in your part of the country. In my part of the country the interstate rate is always the low rate. For instance, the wholesale grocer or wholesale dry goods man or wholesaler in any kind of business in Chicago can distribute his product, or what he sells, in Iowa a good deal cheaper than it can be shipped into Des Moines where I live and there distributed under local rates. We suffer from exactly the opposite difficulty, namely, the low through rate as compared with the high local rate.

Mr. ATKINS. That is, as I see it, a distribution proposition.

Senator CUMMINS. Yours is a distribution problem also.

Mr. ATKINS. Ours is somewhat different from that because in a way we confront that problem not only in Texas but in all southwestern territory. The merchants from Chicago or from St. Louis or Memphis—some of the larger distributing points—can ship directly to points in Louisiana cheaper than they can ship in carloads into Shreveport and in less than carloads out. But that is without a radius of each distributing point, and I believe that is proper. A part of the movement into the distributing points is in carload lots. It moves out in less than carload lots.

Senator CUMMINS. Not oftentimes in carload lots.

Mr. ATKINS. Well, carload distribution is not as heavy with us as it is with the more densely populated territories to the north of us. Our distribution is mainly—and I think I can safely say it of Texas, too—the main distribution is in less-than-carload lots. We ship heavy tonnage of fertilizer in carload lots, window glass and other articles in that way, but the general distribution is at less-than-carload rates from all of our distributing points.

Senator CUMMINS. I have examined this citation from Two hundred and twenty-second United States, and it is due to Mr. Walter to say that it justifies his statement, although it contains the element that I suggested, namely, the inseparable connection between the intrastate and interstate traffic. I refer to the case of the Southern Railway Co. *v.* The United States, in Two hundred and twenty-second United States, page 20. On the power of Congress it is a very illuminating case.

The CHAIRMAN. The decision in that case will be incorporated in the record.

(The decision referred to is here printed in full, as follows:)

Mr. Justice Van Devanter delivered the opinion of the court.

This was a civil action to recover penalties for the violation in specified instances of the safety-appliance acts of Congress. (27 Stat., 531, ch. 196; 32 Stat., 943, ch. 976.) The Government prevailed in the district court and the defendant sued out this direct writ of error.

Briefly stated, the case is this; The defendant, while operating a railroad which was "a part of a through highway" over which traffic was continually being moved from one State to another, hauled over a part of its railroad, during the month of February, 1907, five cars the couplers upon which were defective and inoperative.

Two of the cars were used at the time in moving interstate traffic and the other three in moving intrastate traffic, but it does not appear that the use of the three was in connection with any car or cars used in interstate commerce. The defendant particularly objected to the assessment of any penalty for the hauling of the three cars, and insisted, first, that such a hauling in intrastate commerce, although upon a railroad over which traffic was continually being moved from one State to another, was not within the prohibition of the safety-appliance acts of Congress, and, second, that, if it was, those acts should be pronounced invalid as being in excess of the power of Congress under the commerce clause of the Constitution. But the objection was overruled (164 Fed. Rep., 347), and error is assigned upon that ruling.

The original act of March 2, 1893 (27 Stat., 531, ch. 196), imposed upon every common carrier "engaged in interstate commerce by railroad" the duty of equipping all trains, locomotives, and cars, used on its line of railroad in moving interstate traffic with designated appliances calculated to promote the safety of that traffic and of the employees engaged in its movement; and the second section of that act made it unlawful for "any such common carrier" to haul or permit to be hauled or used on its line of railroad any car "used in moving interstate traffic" not equipped with automatic couplers capable of being coupled and uncoupled without the necessity of a man going between the ends of the cars. The act of March 2, 1903 (32 Stat., 943, ch. 976), amended the earlier one and enlarged its scope by declaring, inter alia, that its provisions and requirements should "apply to all trains, locomotives, tenders, cars, and similar vehicles, used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith." Both acts contained some minor exceptions, but they have no bearing here.

The real controversy is over the true significance of the words "on any railroad engaged" in the first clause of the amendatory provision. But for them the true test of the application of that clause to a locomotive, car, or similar vehicle would be, as it was under the original act, the use of the vehicle in moving interstate traffic. On the other hand, when they are given their natural signification, as presumptively they should be, the scope of the clause is such that the true test of its application is the use of the vehicle on a railroad which is a highway of interstate commerce, and not its use in moving interstate traffic. And so certain is this that we think there would be no contention to the contrary were it not for the presence in the amendatory provision of the third clause "and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith." In this there is a suggestion that what precedes does not cover the entire field, but at most it is only a suggestion, and gives no warrant for disregarding the plain words "on any railroad engaged" in the first clause. True, if they were rejected, the two clauses, in the instance of a train composed of many cars, some moving interstate traffic and others moving intrastate traffic, would by their concurrent operation bring the entire train within the statutes. But it is not necessary to reject them to accomplish this result, for the first clause, with those words in it, does even more; that is to say, it embraces every train on a railroad which is a highway of interstate commerce without regard to the class of traffic which the cars are moving.

The two clauses are in no wise antagonistic, but, at most, only redundant, and we perceive no reason for believing that Congress intended that less than full effect should be given to the more comprehensive one, but, on the contrary, good reason for believing otherwise. As between the two opposing views, one rejecting the words "on any railroad engaged" in the first clause and the other treating the third clause as redundant, the latter is to be preferred, first, because it is in accord with the manifest purpose shown throughout the amendatory act, to enlarge the scope of the earlier one and to make it more effective, and, second, because the words which it would be necessary to reject to give effect to the other view were not originally in the amendatory act, but were inserted in it by way of amendment while it was in process of adoption (Cong. Rec., 57th Cong., 1st sess., vol. 35, pt. 7, p. 7300; id., 2d sess., vol. 36, pt. 3, p. 2268), thus making it certain that without them the act would not express the will of Congress.

For these reasons it must be held that the original act as enlarged by the amendatory one is intended to embrace all locomotives, cars, and similar vehicles used on any railroad which is a highway of interstate commerce.

We come, then, to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving intrastate traffic but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, Is there a real or substantial relation or connection between what is requried by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts

obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way, Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein, and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it; that is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce.

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge; both classes of traffic are at times carried in the same car and when this is not the case the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are interdependent, for whatever brings delay or disaster to one, or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any part of any train is a menace not only to that train but to others.

These practical considerations make it plain, as we think, that the questions before stated must be answered in the affirmative.

Affirmed.

The CHAIRMAN. The reporter will also insert in the record the Shreveport decision which has been referred to.

(The Shreveport decision referred to is here printed in full, as follows:)

DECISION OF THE SUPREME COURT OF THE UNITED STATES IN THE SHREVEPORT RATE CASE, MONDAY, JUNE 8, 1914.

Winfred T. Denison, Assistant Attorney General, for the United States.

P. J. Farrell, for Interstate Commerce Commission.

R. G. Pleasant, attorney general, Louisiana; W. M. Barrow, assistant attorney general, Louisiana; Luther M. Walter, special counsel, for railroad commission of Louisiana.

H. M. Garwood and H. A. Scandrett, for Houston East and West Texas Railway.

E. B. Perkins, S. H. West, and Roy F. Britton, for St. Louis Southwestern Railway Co.

Daniel Upthegrove, Joseph M. Bryson, Alex S. Coke, A. H. McKnight, for Missouri, Kansas & Texas Railway.

H. G. Herbel, Fred G. Wright, for Texas Pacific.

Supreme Court of the United States. Nos. 567 and 568. October term, 1913. 567. Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co. et al., Appellants, *v.* The United States, the Interstate Commerce Commission et al. 568. The Texas & Pacific Railway Co. et al., Appellants, *v.* The United States, the Interstate Commerce Commission et al. Appeals from the United States Commerce Court. June 8, 1914.

Mr. JUSTICE HUGHES delivered the opinion of the court:

These suits were brought in the Commerce Court by the Houston, East & West Texas Railway Co., and the Houston & Shreveport Railroad Co., and by the Texas & Pacific Railway Co., respectively, to set aside an order of the Interstate Commerce Commission, dated March 11, 1912, upon the ground that it exceeded the commission's authority. Other railroad companies [1] intervened in support of the petitions,

[1] The Missouri, Kansas & Texas Railway Co. of Texas, the St. Louis Southwestern Railway Co., and the St. Louis Southwestern Railway Co. of Texas.

and the Interstate Commerce Commission and the Railroad Commission of Louisiana intervened in opposition. The petitions were dismissed. 205 Fed. 380.

The order of the Interstate Commerce Commission was made in a proceeding initiated in March, 1911, by the Railroad Commission of Louisiana. The complaint was that the appellants, and other interstate carriers, maintained unreasonable rates from Shreveport, La., to various points in Texas, and, further, that these carriers in the adjustment of rates over their respective lines unjustly discriminated in favor of traffic within the State of Texas and against similar traffic between Louisiana and Texas. The carriers filed answers; numerous pleas of intervention by shippers and commercial bodies were allowed; testimony was taken and arguments were heard.

The gravamen of the complaint, said the Interstate Commerce Commission, was that the carriers made rates out of Dallas and other Texas points into eastern Texas which were much lower than those which they extended into Texas from Shreveport. The situation may be briefly described: Shreveport, La., is about 40 miles from the Texas State line, and 231 miles from Houston, Tex., on the line of the Houston, East & West Texas and Houston & Shreveport Cos. (which are affiliated in interest); it is 189 miles from Dallas, Tex., on the line of the Texas & Pacific. Shreveport competes with both cities for the trade of the intervening territory. The rates on these lines from Dallas and Houston, respectively, eastward to intermediate points in Texas were much less, according to distance, than from Shreveport westward to the same points. It is undisputed that the difference was substantial and injuriously affected the commerce of Shreveport. It appeared, for example, that a rate of 60 cents carried first-class traffic a distance of 160 miles to the eastward from Dallas, while the same rate would carry the same class of traffic only 55 miles into Texas from Shreveport. The first-class rate from Houston to Lufkin, Tex., 118.2 miles, was 50 cents per 100 pounds, while the rate from Shreveport to the same point, 112.5 miles, was 69 cents. The rate on wagons from Dallas to Marshall, Tex., 147.7 miles was 36.8 cents, and from Shreveport to Marshall, 42 miles, 56 cents. The rate on furniture from Dallas to Longview, Tex., 124 miles, was 24.8 cents, and that from Shreveport to Longview, 65.7 miles, was 35 cents. These instances of differences in rates are merely illustrative; they serve to indicate the character of the rate adjustment.

The Interstate Commerce Commission found that the interstate class rates out of Shreveport to named Texas points were unreasonable, and it established maximum class rates for this traffic. These rates, we understand, were substantially the same as the class rates fixed by the Railroad Commission of Texas, and charged by the carriers, for transportation for similar distances in that State. The Interstate Commerce Commission also found that the carriers maintained "higher rates from Shreveport to points in Texas" than were in force "from cities in Texas to such points under substantially similar conditions and circumstances," and that thereby "an unlawful and undue preference and advantage" was given to the Texas cities and a "discrimination" that was "undue and unlawful" was effected against Shreveport. In order to correct this discrimination, the carriers were directed to desist from charging higher rates for the transportation of any commodity from Shreveport to Dallas and Houston, respectively, and intermediate points, than were contemporaneously charged for the carriage of such commodity from Dallas and Houston toward Shreveport for equal distances, as the commission found that relation of rates to be reasonable. (23 I. C. C., 31, 46–48.)

The order in question is set forth in the margin.[1] The report states that under this order it will be the duty of companies "to duly and justly equalize the terms and conditions" upon which they will extend "transportation to traffic of a similar character moving into Texas from Shreveport with that moving wholly within Texas," but that, in effecting such equalization, the class scale rates as prescribed shall not be exceeded.

[1] "This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"*It is ordered*, That defendants, The Texas & Pacific Railway Co., The Houston, East & West Texas Railway Co., and Houston & Shreveport Railroad Co., be, and they are hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting their present class rates for the transportation of traffic from Shreveport, La., to the points in Texas hereinafter mentioned on their respective lines, as the commission in said report finds such rates to be unjust and unreasonable.

"*It is further ordered*, That defendant, The Texas & Pacific Railway Co., be, and it is hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the commission in its report to be reasonable, to wit (rates inserted).

"*It is further ordered*, That defendants, The Houston, East & West Texas Railway Co. and Houston & Shreveport Railroad Co., be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Shreveport, La., to the below-named points in Texas, class rates which shall not exceed the following, in cents per 100 pounds, which rates are found by the commission in its report to be unreasonable, to wit (rates inserted).

"*It is further ordered*, That defendant, The Texas & Pacific Railway Co., be, and it is hereby, notified and required to cease and desist, on or before the 1st day of May, 1912, and for a period of not less than two years thereafter abstain, from exacting any higher rates for the transportation of any article from Shreveport into Texas than those charged for eastward traffic from Dallas and Houston, respectively, for equal distances. There are, it appears, commodity rates fixed by the Railroad Commission of Texas for intrastate hauls, which are substantially less than the class, or standard, rates prescribed by that commission; and thus the commodity rates charged by the carriers from Dallas and Houston eastward to Texas points are less than the rates which they demand for the transportation of the same articles for like distances from Shreveport into Texas. The present controversy relates to these commodity rates.

The point of the objection to the order is that, as the discrimination found by the commission to be unjust arises out of the relation of intrastate rates, maintained under State authority, to interstate rates that have been upheld as reasonable, its correction was beyond the commission's power. Manifestly the order might be complied with and the discrimination avoided, either by reducing the interstate rates from Shreveport to the level of the competing intrastate rates, or by raising these intrastate rates to the level of the interstate rates, or by such reduction in the one case and increase in the other as would result in equality. But it is urged that, so far as the interstate rates were sustained by the commission as reasonable, the commission was without authority to compel their reduction in order to equalize them with the lower intrastate rates. The holding of the Commerce Court was that the order relieved the appellants from further obligation to observe the intrastate rates and that they were at liberty to comply with the commission's requirements by increasing these rates sufficiently to remove the forbidden discrimination. The invalidity of the order in this aspect is challenged upon two grounds:

(1) That Congress is impotent to control the intrastate charges of an interstate carrier even to the extent necessary to prevent injurious discrimination against interstate traffic; and

(2) That, if it be assumed that Congress has this power, still it has not been exercised, and hence the action of the commission exceeded the limits of the authority which has been conferred upon it.

First. It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several States. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. The purpose was to make impossible the recurrence of the evils which had overwhelmed the Confederation and to provide the necessary basis of national unity by insuring "uniformity of regulation against conflicting and discriminating State legislation." By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. (Gibbons *v.* Ogden, 9 Wheat., 1, 196, 224; Brown *v.* Maryland, 12 Wheat., 419, 446; County of Mobile *v.* Kimball, 102 U. S., 691, 696, 697; Smith *v.* Alabama, 124 U. S., 465, 473; Second Employers' Liability Cases, 223 U. S., 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S., 352, 398, 399.)

"*And it is further ordered*, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the 1st day of May, 1912, and maintain in force thereafter during a period of not less than two years, substantially similar practices respecting the concentration of interstate cotton at Shreveport, La., to those which are contemporaneously observed by said defendants respecting the concentration of cotton within the State of Texas, provided the practices adopted shall be justifiable under the act to regulate commerce and applicable fairly under like conditions elsewhere on the lines of such defendants."

Congress is empowered to regulate—that is, to provide the law for the government of interstate commerce; to enact "all appropriate legislation" for its "protection and advancement" (The Daniel Ball, 10 Wall., 557, 564); to adpot measures "to promote its growth and insure its safety" (County of Mobile *v.* Kimball, supra); "to foster, protect, control, and restrain" (Second Employers' Liability Cases, supra). Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard, or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. (Baltimore & Ohio Railroad Co. *v.* Interstate Commerce Commission, 221 U. S., 612, 618; Southern Railway Co. *v.* United States, 222 U. S., 20, 26, 27; Second Employers' Liability Cases, supra, pp. 48, 51; Interstate Commerce Commission *v.* Goodrich Transit Co., 224 U. S., 194, 205, 213; Minnesota Rates Cases, supra, p. 431; Illinois Central Railroad Co. *v.* Behrens, decided Apr. 27, 1914.)

In Baltimore & Ohio Railroad Co. *v.* Interstate Commerce Commission, supra, the argument against the validity of the hours-of-service act (Mar. 4, 1907, c. 2939, 34 Stat., 14, 15) involved the consideration that the interstate and intrastate transactions of the carriers were so interwoven that it was utterly impracticable for them to divide their employees so that those who were engaged in interstate commerce should be confined to that commerce exclusively. Employees dealing with the movement of trains were employed in both sorts of commerce; but the court held that this fact did not preclude the exercise of Federal power. As Congress could limit the hours of labor of those engaged in interstate transportation, it necessarily followed that its will could not be frustrated by prolonging the period of service through other requirements of the carriers or by the commingling of duties relating to interstate and intrastate operations.

Again, in Southern Railway Co. *v.* United States, supra, the question was presented whether the amendment to the safety-appliance act (Mar. 2, 1903, 32 Stat., 943) was within the power of Congress in view of the fact that the statute was not confined to vehicles that were used in interstate traffic but also embraced those used in intrastate traffic. The court answered affirmatively, because there was such a close relation between the two classes of traffic moving over the same railroad as to make it certain that the safety of the interstate traffic, and of those employed in its movement, would be promoted in a real and substantial sense by applying the requirements of the act to both classes of vehicles. So, in the Second Employers' Liability Cases, supra, it was insisted that while Congress had the authority to regulate the liability of a carrier for injuries sustained by one employee through the negligence of another, where all were engaged in interstate commerce, that power did not embrace instances where the negligent employee was engaged in intrastate commerce. The court said that this was a mistaken theory, as the causal negligence when operating injuriously upon an employee engaged in interstate commerce had the same effect with respect to that commerce as if the negligent employee were also engaged therein. The decision in Employers' Liability Cases (207 U. S., 463) is not opposed, for the statute there in question (June 11, 1906, c. 3073, 34 Stat., 232) sought to regulate the liability of interstate carriers for injuries to any employee even though his employment had no connection whatever with interstate commerce. (See Illinois Central R. R. Co. *v.* Behrens, supra.)

While these decisions sustaining the Federal power relate to measures adopted in the interest of the safety of persons and property, they illustrate the principle that Congress in the exercise of its paramount power may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a State as such, but that it does possess the power to foster and protect interstate commerce, and to

take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled.

This principle is applicable here. We find no reason to doubt that Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of State authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

It is also to be noted—as the Government has well said in its argument in support of the commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State can not fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority. This question was presented with respect to the long-and-short-haul provision of the Kentucky constitution, adopted in 1891, which the court had before it in Louisville & Nashville R. R. Co. *v.* Kentucky (184 U. S., 27). The State court had construed this provision as embracing a long haul, from a place outside to one within the State, and a shorter haul on the same line and in the same direction between points within the State. This court held that, so construed, the provision was invalid as being a regulation of interstate commerce because "it linked the interstate rate to the rate for the shorter haul and thus the interstate charge was directly controlled by the State law." (See 230 U. S., pp. 428, 429.) It is for Congress to supply the needed correction where the relation between intrastate and interstate rates presents the evil to be corrected, and this it may do completely by reason of its control over the interstate carrier in all matters having such a close and substantial relation to interstate commerce that it is necessary or appropriate to exercise the control for the effective government of that commerce.

It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard, fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes.

Having this power, Congress could provide for its execution through the aid of a subordinate body; and we conclude that the order of the commission now in question can not be held invalid upon the ground that it exceeded the authority which Congress could lawfully confer.

Second. The remaining question is with regard to the scope of the power which Congress has granted to the commission.

Section 3 of the act to regulate commerce provides (24 Stat., 379, 380):

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

This language is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn. There is no exception or qualification with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate to interstate rates as maintained by the carrier. It is apparent from the legislative history of the act that the evil of discrimination was the principal thing aimed at, and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. The purpose of the measure was thus emphatically stated in the elaborate report of the Senate Committee on Interstate Commerce which accompanied it:

"The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as

now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations" * * *. (S. Rept. No. 46, 49th Cong., 1st sess. p. 215.)

The opposing argument rests upon the proviso in the first section of the act which in its original form was as follows:

"*Provided, however*, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

When the act was amended so as to confer upon the commission the authority to prescribe maximum interstate rates, this proviso was reenacted; and when the act was extended to include telegraph, telephone, and cable companies engaged in interstate business, an additional clause was inserted so as to exclude intrastate messages. (See acts of June 29, 1906, c. 3591, 34 Stat., 584; June 18, 1910, c. 309, 36 Stat., 539, 545.)

Congress thus defined the scope of its regulation and provided that it was not to extend to purely intrastate traffic. It did not undertake to authorize the commission to prescribe intrastate rates and thus to establish a unified control by the exercise of the rate-making power over both descriptions of traffic. Undoubtedly—in the absence of a finding by the commission of unjust discrimination—intrastate rates were left to be fixed by the carrier and subject to the authority of the States or of the agencies created by the States. This was the question recently decided by this court in the Minnesota Rate Cases, supra. There, the State of Minnesota had established reasonable rates for intrastate transportation throughout the State and it was contended that, by reason of the passage of the act to regulate commerce, the State could no longer exercise the State-wide authority for this purpose which it had formerly enjoyed; and the court was asked to hold that an entire scheme of intrastate rates, otherwise validly established, was null and void because of its effect upon interstate rates. There had been no finding by the Interstate Commerce Commission of any unjust discrimination. The present question, however, was reserved, the court saying (230 U. S., p. 419): "It is urged, however, that the words of the proviso" (referring to the proviso above mentioned) "are susceptible of a construction which would permit the provisions of section 3 of the act, prohibiting carriers from giving an undue or unreasonable preference or advantage to any locality, to apply to unreasonable discriminations between localities in different States, as well when arising from an intrastate rate as compared with an interstate rate as when due to interstate rates exclusively. If it be assumed that the statute should be so construed, and it is not necessary now to decide the point, it would inevitably follow that the controlling principle governing the enforcement of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts."

Here, the commission expressly found that unjust discrimination existed under substantially similar conditions of transportation and the inquiry is whether the commission had power to correct it. We are of the opinion that the limitation of the proviso in section one does not apply to a case of this sort. The commission was dealing with the relation of rates injuriously affecting, through an unreasonable discrimination, traffic that was interstate. The question was thus not simply one of transportation that was "wholly within one State." These words of the proviso have appropriate reference to exclusively intrastate traffic, separately considered; to the regulation of domestic commerce, as such. The powers conferred by the act are not thereby limited where interstate commerce itself is involved. This is plainly the case when the commission finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates as maintained by a carrier subject to the act. Such a matter is one with which Congress alone is competent to deal, and, in view of the aim of the act and the comprehensive terms of the provisions against unjust discrimination, there is no ground for holding that the authority of Congress was unexercised and that the subject was thus left without governmental regulation. It is urged that the practical construction of the statute has been the other way. But, in assailing the order, the appellants ask us to override the construction which has been given to the statute by the authority charged with its execution, and it can not be said that the earlier action of the commission was of such a controlling character as to preclude it from giving effect to the law. The commission, having before it a plain case of unreasonable discrimination on the part of interstate carriers against interstate trade, carefully examined the question of its authority and decided that it had the power to make this remedial order. The Commerce Court sustained the authority of the commission and it is clear that we should not reverse the decree unless the law has been misapplied. This we can not say; on the contrary, we are convinced that the authority of the commission was adequate.

The further objection is made that the prohibition of section 3 is directed against unjust discrimination or undue preference only when it arises from the voluntary act of the carrier and does not relate to acts which are the result of conditions wholly beyond its control (East Tennessee, etc., Ry. Co. *v.* Interstate Commerce Commission, 181 U. S., 1, 18.) The reference is not to any inherent lack of control arising out of traffic conditions, but to the requirements of the local authorities which are assumed to be binding upon the carriers. The contention is thus merely a repetition in another form of the argument that the commission exceeded its power; for it would not be contended that local rules could nullify the lawful exercise of Federal authority. In the view that the commission was entitled to make the order, there is no longer compulsion upon the carriers by virtue of any inconsistent local requirement. We are not unmindful of the gravity of the question that is presented when State and Federal views conflict. But it was recognized at the beginning that the Nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress and of the agencies it lawfully establishes must control.

In conclusion: Reading the order in the light of the report of the commission, it does not appear that the commission attempted to require the carriers to reduce their interstate rates out of Shreveport below what was found to be a reasonable charge for that service. So far as these interstate rates conformed to what was found to be reasonable by the commission, the carriers are entitled to maintain them, and they are free to comply with the order by so adjusting the other rates to which the order relates, as to remove the forbidden discrimination. But this result they are required to accomplish.

The decree of the Commerce Court is affirmed in each case.

Affirmed.

Mr. Justice Lurton and Mr. Justice Pitney dissent.

THE CHAIRMAN. The committee will next hear Mr. Brent.

STATEMENT OF MR. THEODORE BRENT, GENERAL MANAGER OF THE JOINT TRAFFIC BUREAU OF NEW ORLEANS, NEW ORLEANS, LA.

Mr. BRENT. Mr. Chairman, I will state that the joint traffic bureau is a joint contract organization between the various bodies maintained for the purpose of handling rate adjustments.

I desire, if I can in the few moments that are allotted to me, to get away from the Louisiana and Texas situation. New Orleans has had very little to do or very little interest in the Shreveport case as such. We have the whole State of Louisiana between us and the State of Texas. Any mileage rate which may be fixed from Shreveport into Texas must be modified in order to be of any value to us.

My experience, for a period of nearly 20 years, has been in the traffic department of railroads, and the most important work was on the Rock Island and Frisco lines; and as assistant to the vice president of those lines in the last four or five years of their joint operation it was necessary daily to consider the question of State versus interstate rates over the entire territory through which those lines operated—a territory covering 18 States—and it was inevitable that anyone with such an outlook must reach some pretty definite conclusion, and I first reached those conclusions from a standpoint of a railroad man, and now, after two years of effort for the shippers, I have found that I have not changed those conclusions very much by looking at the same propositions from the standpoint of the user of the rates.

My general observation concerning this whole matter is that the field of operation of the State commission in the matter of rates is a very narrow one. Under the decision which the Supreme Court has recently rendered in the Shreveport case the field of operation of a State rate is simply this, as I see it: The State can fix the rate and it is usually a mileage rate, for operation within its borders, and until Congress has spoken—and as I deem the speaking of Congress, that speech is now through its agent, the Interstate Commerce Commission—and until the rates are attacked as discriminatory they may be perfectly reasonable rates and entirely right within their scope. But when a citizen of a State has complained concerning the adjustment of State rates, and some tribunal of necessity takes up the State adjustment and matches it up against the interstate condition, and finds that there is a discrimination—then that tribunal, which now seems to be the Interstate Commerce Commission, speaks, and speaks with authority of Congress, and speaks with the authority given it by the Constitution and as outlined by the Supreme Court, and that decision becomes the law.

Now, Senator Cummins has spoken of his watermelon situation in Iowa, and I want to make a very close analysis of that. Muscatine is a very large producer of watermelons, and the State commission may fix a rate for a distance of 30 miles in the State of Iowa, and by doing that fix the rate to Davenport, and that may be perfectly reasonable, and the rate may be reasonable itself, but Citizen Hoopes, or Citizen Hahn, at Muscatine, may to-morrow complain that his rates to Rockford, Ill., are too high compared with the rates he pays to Davenport. Then that necessarily brings the operation of that State rate into question, and that moment some tribunal must step in to determine what is the reasonable rate to be fixed on watermelons, having no relation to the rate within the State of Iowa alone but the relation which a citizen of Iowa desires to have established in order to give him a distributing territory wider than the State of Iowa. Now somebody has got to fix that, and it is not a question for the court to fix; it is a question of administration; it is a question of fact, and the courts have repeatedly come back to complainants and said, "We can not pass upon these questions of fact; questions of fact must be determined by the Interstate Commerce Commission, which is Congress s agent."

Now the commission, when it takes up that scale of Iowa rates, may say that the Iowa rate, in its judgment, is too low, or may say the interstate rate is too high, and that moment, it seems to me, the interstate agent must have paramount jurisdiction to determine what is a reasonable scale of rates for the citizen of Iowa in order to give him the broadest possible distribution of his goods.

The same thing operates, Senator Cummins, in connection with your jobbing rates. It is perfectly reasonable for the Iowa commission to fix a scale of mileage rates which is right, to permit the Des Moines jobber to reach out into Iowa in competition with the Marshalltown jobber or the Cedar Rapids jobber, if those were the only ones to be considered. But your man in Iowa, in Oelwein, in Audubon, in Red Oak, does not want to deal with Des Moines and Cedar Rapids alone, but he wants the rate adjusted, fixed, so that Marshall Field, in Chicago, can come in and compete with your jobber in Des Moines, and

the moment that case is raised, the railroad commission's rate in Iowa becomes subject to the Interstate Commerce Commission's review.

So we gradually, through these complaints, come to review the whole fabric of our State rates from the broader standpoint of the whole adjustment and the whole distributing territory of these United States.

The Kansas commission can not fix a rate on grain in the State of Kansas without it immediately fixes the rates interstate, because of this situation, Senator Cummins, that the biggest grain market Kansas has is Kansas City, and half of the elevators are located in Kansas City, Kans., and the other half in Kansas City, Mo. The minute the State commission of Kansas fixes a mileage rate which makes the rate on grain from Manhattan to Kansas City, Kans., it automatically fixes the rate to Kansas City, Mo., because they are one and inseparable, and that moment the man in Manhattan insists on having the same rate by which he can reach the Omaha market, which is interstate, and the St. Joseph, which is interstate, and those rates are fixed not only in relation to those markets, but in relation to the markets of St. Louis.

Senator CUMMINS. Those are all interstate?

Mr. BRENT. But not the Kansas City, Kans., that is the first rate fixed, and so it is that when the Kansas State commission began to legislate on grain and live-stock rates, and the Nebraska commission began to legislate on the same things, those railroads which operated interstate found it almost necessary to take those rates into court, because their own patrons in those States were the ones that forced them to do it. They had to have the broader markets.

Senator CUMMINS. I am going to make an illustration and want to see if I get your viewpoint. Take a case on the road you formerly were connected with, we will take Atlantic. An Atlantic retailer wants to buy in Chicago, wants to buy in Des Moines, two competitive points.

Mr. BRENT. Yes, sir.

Senator CUMMINS. Do you say that he could appeal to the Interstate Commerce Commission and insist upon a rate, insist that the Interstate Commerce Commission shall fix the rate from Des Moines to Atlantic in order that the interstate rate and the local rate may be such as to create competitive conditions between Des Moines and Chicago?

Mr. BRENT. I say that in practice, Senator, that is what is done.

Senator CUMMINS. That is your view——

Mr. BRENT. That is my judgment, Senator.

Senator CUMMINS. That is your view of the commission. Of course that is a legal question.

Mr. BRENT. You have to look at those things from a legal standpoint.

Senator CUMMINS. But it is your idea that the merchant in Atlantic has a right to reach out and create competitive purchasing points—St. Louis, Chicago, Des Moines, and Omaha—and insist that there shall be a rate established from Des Moines to Atlantic which is intrastate entirely, that will enable the Des Moines jobber to reach Atlantic upon the same terms, everything considered—I do not mean

exactly the same rate—as the Chicago jobber or the Omaha jobber or the St. Louis jobber?

Mr. BRENT. No, sir; I said the reverse.

Senator CUMMINS. I am speaking now of the question of power.

Mr. BRENT. Speaking of the question of fact. I am speaking of the actual way the thing is done. He does not appeal to the Interstate Commerce Commission to fix his State rate.

Senator CUMMINS. What could he do?

Mr. BRENT. I do not see how he could, exactly.

Senator CUMMINS. He could say that the interstate rate to the larger point outside of the State, together with the local rate, Des Moines to Atlantic, discriminates against him and prevents him from buying in Des Moines?

Mr. BRENT. If he finds that to be the case his natural act would be to go to the State railroad commission and ask for the rate from Des Moines to be reduced. That is what he would do.

Senator CUMMINS. That is what I supposed; but I understood your theory was that he could go to the Interstate Commerce Commission and say that the sum of the interstate rate and the local rate must enable that business to be done.

Mr. BRENT. Oh, no; I did not say that, Senator, and I hold no brief for the jobber. The Atlantic man is the retailer; the Atlantic man wants to find the ability to buy, as you say, in Des Moines in competition with buying in Chicago. Now, he would not go to the Interstate Commerce Commission to do that. He does not care to buy Chicago goods dealt in by a Des Moines jobber and retailed in his town. All he wants to be able to do is to buy the character of goods he desires to retail or distribute. If he finds the goods he wants, he wants to be able to buy them in Des Moines in competition with the man in Chicago, but he would not go to the Interstate Commerce Commission to do that. If he found his adjustment in Des Moines was wrong, he would ask the railroad commission in Iowa to reduce the rate within the State.

Senator CUMMINS. But I thought your theory was that the Interstate Commerce Commission could do that for him.

Mr. BRENT. No, sir.

Senator CUMMINS. If he wants to buy in St. Louis or Chicago, he can insist that there shall be a nondiscriminative rate between or through Des Moines and Atlantic.

Mr. BRENT. He can appeal for the——

Senator CUMMINS. But from the theory suggested here I do not see why he could not appeal to the Interstate Commerce Commission to fix the rate between Des Moines and Atlantic.

Mr. BRENT. I do not know whether he could or not. All I say is it would not be practicable to do that way, but when he finds that there is a discrimination between a State and an interstate rate which does him an injustice, then he immediately applies to the Interstate Commerce Commission to fix the broader market for him.

Senator CUMMINS. That would be in that sense a discrimination, would it not?

Mr. BRENT. Well, we must not expect the unusual. It is perfectly logical that a man should go to a State commission if he wants a State rate fixed, and that he should go to an interstate commission if he wants an interstate rate fixed, and if the rates came in conflict then immediately the broader jurisdiction prevails. I think that is surely the practical outcome of the Shreveport decision.

Senator CUMMINS. Wherever the Interstate Commerce Commission has jurisdiction why its order must prevail over the order of the State commission, of course?

Mr. BRENT. Yes, sir; and to my judgment that begins the moment you have complaints of discrimination and invoke the aid of the agency of Congress.

Mr. HAINES. It means he will go to the State commission for relief, but because of the fact that the Interstate Commission regulations predominate there would be no State commission, and therefore he would get his relief from the Interstate Commission.

Mr. BRENT. That is not a fair statement of it.

Mr. HAINES. It is just exactly the statement——

Mr. BRENT. There is not any question but the commission, as the Senator said, in their decision in the Southern Railway case, has that power, and the Interstate Commerce Commission is exercising it to-day without question in the matter of safety appliances. In our town the railroads are not permitted to operate switch movements without 90 per cent of the cars coupled up with air. That is purely a State movement; but because that train may be moving cars both in State and interstate business the Interstate Commerce Commission fixed that as the rule as being the reasonable view for general operation, both State and interstate.

There is only one other thing I wish to say, and that is it seems to me the whole effort here to make out a case of inability on the part of the Interstate Commerce Commission is nothing but a plea in avoidance. Let us admit that the Interstate Commerce Commission is overburdened with work to-morrow, yet it is within the power of Congress to change that. The administration of law is wholly within the power of Congress to change. We should fix the fundamentals right. Let us get on a basis of law which will cause the least friction and discrimination, then if the method of the operation and the administration is faulty, and it certainly is to-day, they should be taken up, as they undoubtedly will be, under Senate resolution 60, and a better basis of administration worked out.

Before I leave off I want to introduce into the record, not because I want to cause any further friction, but for the information of the committee, the emergency clause of the Texas railroad law.

Mr. HAINES. I agreed to furnish the entire Texas statute.

Mr. BRENT. The emergency clause is the one which permits the commission to do anything it sees fit on a case which seems to be an emergency and without hearing.

The CHAIRMAN. You may have the emergency clause inserted as a part of your remarks.

(The document referred to is here printed in full, as follows:)

ART. 6660. *Emergency freight rates.*—In addition to the powers conferred on the Railroad Commission of Texas by articles 6655 and 6659 said commission shall have the power, when deemed by it necessary, to prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or, in case of any

other emergency, to be judged of by the commission, it shall be its duty to temporarily alter, amend, or suspend any existing freight rates, tariffs, schedules, orders, and circulars on any railroad or part of any railroad in this State, and to fix freight rates where none exist.

ART. 6661. *To what rates apply.*—Said emergency rates, so made by the commission, shall apply on any one or more of all the railroads in this State, or part of railroads, as may be directed by the commission.

ART. 6662. *Rates to take effect, when, and how long continued.*—Said rates, so made, shall take effect at such time and remain in force for such length of time as may be prescribed by the commission.

Mr. MORGAN. Will you also file in connection with that the emergency clause of the Interstate Commerce Commission, too?

Mr. BRENT. I do not know of any such clause.

Mr. MORGAN. Will you look that up and file it?

Mr. BRENT. There is not any such.

Mr. MORGAN. The Interstate Commerce Commission has authority to make a rate on one day's notice where another railroad made the rate over another route?

Mr. BRENT. That is not the way the thing is worded.

Mr. MORGAN. That is the emergency clause of the Interstate Commerce Commission.

Mr. BRENT. I realize that hard cases make bad laws, and I do not quote these cases as being anything but illustrative to show what a commission can do when it has a mind to do it. During my time with the Frisco road it so happened that the Frisco desired to put in what it considered a reasonable hardware rate from the city of St. Louis to its lines in Texas, and let us recall that every railroad when it crosses the State line is separate from its parent system and becomes a new corporation in the State of Texas; it can have no connection with outside corporations; it must have its entire administration within the State; every official, except the president, must live within the State; all its rates must be stopped and divided at the State line, because it is a new corporation—and it so happened that the Frisco put in a line of what it thought reasonable hardware rates on the whole of the Frisco lines in Texas, and it was immediately served, not with an order, but the general agent in Texas wired to headquarters at St. Louis that unless those rates were immediately withdrawn the whole class scale of rates, the mileage scale of class rates on its line within the State of Texas, would be reduced 50 per cent immediately, and would be kept on that 50 per cent basis until this rate was remedied, until this injustice was remedied. It is needless to say that the exercise of such an emergency power as that does and must always affect interstate rates.

Senator BRANDEGEE. That was a very persuasive fact.

Mr. BRENT. Very persuasive. Another time the Rock Island desired to put on a line of salt rates, which they thought reasonable, from Hutchinson, Kans., to the panhandle of Texas, to its Gulf line there, and it was visited with this same emergency provision in a very few hours. They were telegraphed to put in a line of rates from Grand Saline, Tex., which would be utterly confiscatory, and everybody knew it when it was suggested. The outcome was, the interstate rates had to be withdrawn.

You will have to pardon me if I bring the case a little bit nearer home. We are not in this for what New Orleans gets out of it, because we are liable to lose more in Louisiana than we get in Texas, but the Texas farmers have stated here that they desire competitive markets for their cotton. Now, 90 per cent of the cotton eventually goes for export to the Gulf ports, but it is usually stopped at the ports and dealt in there, and goes from the ports usually for export. And they have desired to have the rates equalized to the two Gulf ports of Galveston and New Orleans, and it so happened that some years ago the railroads within Texas hearkened to the voice of the farmer and did for a considerable period equalize the rates and put in the same export rates to the city of New Orleans, which is a very large cotton market, that the State railroad commission had forced them to put in to the port of Galveston, and there again the railroads were visited with this emergency provision. It was not put into effect, but it was only intimated that it would be put into effect, and the outcome of it is that the equalization was withdrawn and has been withdrawn for a period of nearly 10 years, and it is only recently, since this Shreveport decision has been rendered, that the railroads have found themselves in a position that they dared do what they knew was fair, and, to a degree, we have gotten that equalization again, and you heard the farmers here to-day asking that it be continued.

I do not know very much about the controversy between the State commission and the farmers of Texas, but where representatives of even one section of the farmers' union come here and ask that this thing should be done, it should be harkened to with some reasonable degree of certitude that they speak from their needs. It so happens that these gentlemen who came here to-day, while they may not represent the whole of the farmers' union, do represent the very territory in east Texas where they particularly desire the equalization of these rates, and are therefore the best able to speak on that situation. You have that situation now before you.

Mr. HAINES. Tell what the Interstate Commerce Commission had to say about it on the cotton situation. I am mighty glad you brought up this question, because the Interstate Commerce Commission passed on that very question.

Mr. BRENT. The Interstate Commerce Commission in fixing rates has constantly to take into consideration the difference between one-line and two-line rates, and it frequently will not order railroads to put in rates which they themselves believe to be fair for marketing purposes, and when Mr. Haines and the people in Texas are willing to live entirely on what they can get from the State commission of Texas, then we shall have to abide by what we can get from the State commission of Louisiana, but they are as often before the Interstate Commerce Commission asking for reasonable interstate arrangements as we are.

Mr. HAINES. The Interstate Commerce Commission never mentioned my name at all.

Mr. BRENT. It hardly serves the purpose to cloud the issue in that way.

Mr. HAINES. What the Interstate Commerce Commission did say was that the difference in distance from New Orleans justified a higher rate to New Orleans than to Galveston. That is what they said.

Mr. BRENT. They said that; I admit they did. And from that standpoint a commission may frequently be compelled to issue an order which the railroad may find that it is desirable, from a business standpoint, to set aside and supersede, and that is the thing the railroads are constantly doing in the interest of business; and when we get things so inflexible that the railroad can no longer do that thing, then it will be a bad day for Texas, Louisiana, and the whole United States, in my judgment, because the concessions which the railroads have made to commerce in this country have very largely contributed to the prosperity of the country—to the business prosperity of the country.

Mr. HAINES. It is just possible that the railroads said to these farmers to write letters to the Texas commission and urge an advance in rates, and if they would do so they would put on this rate. That is quite possible.

Mr. BRENT. The vast difficulty concerning State-made rates is the difference in point of view. Mr. Finn very eloquently stated to-day that it was impossible for there to be an actual discrimination between a State-made and an interstate-made rate. In law I believe that is incontrovertible, but it does not for a moment take into consideration the differences in the points of view of the commissions that are making these rates.

Now the case cited by Senator Reed, of Missouri, is a typical case, but the conditions that were cited in connection with it were not correct. The passenger rate from Chicago to East St. Louis was fixed by the Legislature of the State of Illinois on the 2-cent basis, actual mileage considered. That was not put in voluntarily by the railroads, but it was contested through the courts, and the courts of Illinois found that the Legislature of Illinois had not overstepped its right, or had not done anything wrong in considering the Illinois lines, the prairie lines, in the conditions that existed in Illinois—that the 2-cent mileage scale was not unfair—therefore this rate is fixed, which to-day makes a discrimination against St. Louis.

The difficulty in correcting that thing is—it is very easy for Mr. Haines to come and say that St. Louis could get its relief if the Interstate Commerce Commission were to permit any combinations to be used so that you might use the Illinois mileage rate, plus the bridge toll, and have ready made your fare to St. Louis; that that was the remedy and that was the relief. That is true, but it is also a very shortsighted viewpoint to take of the whole situation.

The Interstate Commerce Commission, when it comes to consider this situation, has an entirely different viewpoint, and it must have. It knows that the fare to St. Louis has got to be considered in relation to the fare to Kansas City; that you must not make a combination through St. Louis, using an Illinois mileage rate to St. Louis and a Missouri mileage rate from St. Louis to Kansas City which will in a way serve to change the through rate from Chicago to Kansas City. It also knows the minute it fixes the rate to Kansas City that that becomes the rate to Omaha, and also knows the minute it fixes those rates, that they become the rates to Memphis.

I say this is essentially a situation of conflict, not of authority, but of viewpoint, and sooner or later we have got to place the broadest viewpoint that we can on this whole rate-making structure.

It may be that the Interstate Commerce Commission, situated at Washington and constituted as it is to-day, is not ready to cope with all the work that that would involve, but certainly from the standpoint of a broad view, and from the standpoint of the good of the country as a whole and the business of the country as a whole, it is equipped, and it must of necessity take a much broader view than any 1 State or any 20 States can take.

That is the difficulty of State-made rates. What may be perfectly reasonable in Illinois for prairie lines, the minute you apply it to an interstate movement it may have to be so coupled up as to fix a relation far beyond the purview of the court that fixed that as a reasonable rate. Those are the difficulties as we see them.

I thank you gentlemen.

Senator SHEPPARD. I want to file a resolution from the citizens of Terrell, Tex., on behalf of this measure. I also wish to reserve the right to file others with the clerk.

(The paper referred to is here printed in full, as follows:)

TERRELL, TEX., *June 24, 1916.*

We, the undersigned business men and citizens of Terrell, Tex., indorse Senate bill 5242, by Senator Morris Sheppard of Texas, entitled "An act to regulate commerce," which bill has as its object the preservation of the authority of the railroad commissions of the several States on intrastate business, and urge its immediate passage by Congress.

Very respectfully,

M. M. RALEY,
President First National Bank,
(And 52 others).

Senator SHEPPARD. I also desire to submit correspondence and resolutions transmitted by San Antonio and Texarkana business concerns.

(The papers referred to are here printed in full, as follows:)

SAN ANTONIO FREIGHT BUREAU,
San Antonio, Tex., June 27, 1916.

Hon. MORRIS SHEPPARD,
United States Senator, Washington, D. C.

DEAR SIR: Referring to your telegram of June 16, in regard to attendance of a committee from Texas at hearing before the Senate committee on the 30th instant in the matter of your bill to amend the act to regulate commerce.

While it will be impossible for the writer to be in Washington on the 30th, several of the traffic representatives from Texas will be there. I inclose herewith a petition addressed to the United States Senate, and signed by thirty-odd shippers and manufacturers of San Antonio, strongly indorsing this bill and urging its early enactment into law. We realize fully its value to Texas interests as well as the interest of all the various States, and wish to do everything we can that will assist in its enactment into law.

Will be glad if you will favor us at any time with any suggestions you may have to offer of anything that we can do to promote the end sought.

Yours, truly,

U. S. PAWKETT.

SAN ANTONIO, TEX., *June 22, 1916.*

To the honorable United States Senate:

Whereas there has been introduced in the United States Senate, by Senator Morris Sheppard, a bill to amend the act to regulate commerce, approved February 4, 1887, the effect of which bill, if enacted into law, will be to protect the various States in the exercise of their constitutional right to control rates, rules, and regulations governing the movement and handling of intrastate commerce, moving wholly within the boundaries of said States, therefore, we, the undersigned citizens of San Antonio, Bexar County, Tex., shippers in both interstate and intrastate commerce, do most

earnestly indorse said bill, and respectfully petition your honorable body to give it early and favorable consideration to the end that it may, at an early date, be enacted into law.

J. Oppenheimer & Co., wholesale grocers; San Antonio Drug Co., wholesale drugs; Gebhardt Chili Powder Co., manufacturers chili powder, etc.; Alamo Cement Co., wholesale builders' material; San Antonio Portland Cement Co., cement manufacturers; G. A. Duerler Manufacturing Co., manufacturing confectioners; M. Halff & Bro., A. H. Halff, president, wholesale dry goods; Caffarelli Bros., by C. C. Caffarelli, wholesale grocers; Ed Steves & Sons, wholesale builders' material; Steves Sash & Door Co., manufacturers sash, doors, etc.; Pruitt Corn Co., by E. L. Asmue, wholesale fruit-produce; William Basse Hardware Co., per Edward E. Basse, wholesale hardware; Allensworth Carnahan Co., per W. Carnahan, jr., wholesale woodenware and paper; M. Bernheim & Co., wholesale hats and gloves; San Antonio Paper Co., per D. E. Newton, wholesale paper, etc.; The Wolff & Marx Co., by Chas. Schreiner, jr., department stores; Maverick-Clarke Litho Co., D. M. McIlhenny, secretary treasurer, wholesale office supplies; Heusinger Hardware Co., R. O. Steele, secretary, wholesale hardware; American Shoe & Hat Co., by H. Oppenheim, vice president, wholesale shoes and hats; E. Frank Saddlery Co., by S. Wallach, secretary, wholesale saddlery; Household Furniture Co., by W. E. Topschard, wholesale furniture; A. B. Frank Co., by Theo. W. Friedrich, wholesale dry goods; San Antonio Sewer Pipe Co., G. S. McElroy, treasurer, manufacturers' clay products; Roy Campbell, wholesale fruit and produce; Calleu & Co., S. B. W., president, wholesale grocers; Alamo Iron Works, San Antonio, Tex., E. A. Holangram, treasurer, wholesale iron and steel articles, Creamery Dairy Co., per H. French, creamery and dairy supplies; M. Castanola & Son, Duffy, wholesale grocers; Star Clay Products Co., J. R. Martin, secretary and treasurer and general manager, manufacturers clay products; Petrich-Saur Lumber Co., by N. L. Petrich, president, wholesale builders' material; W. E. Smith, per W. F. Deeth, manager, wholesale grocer; Newton, Weller & Wagner Co., S. W. Weller, president, wholesale crockery-glassware; Ullmann, Stern & Krausse (Inc.), by Morris Stern, president, wholesale grocers.

TEXARKANA, *June 27, 1916.*

Hon. MORRIS SHEPPARD,
Washington, D. C.

DEAR SIR: We inclose herewith petition signed by Texarkana shippers in support of the Sheppard bill, requiring that State-made freight rates be declared unreasonable by a court of competent jurisdiction before they may be set aside. The Texas shippers heartily appreciate your efforts in this direction, and we trust the inclosed evidence of interest on the part of shippers in this city may be of some assistance to you in connection with the meeting of the Committee on Interstate Commerce, to be held on June 30.

Yours, very truly,

TEXARKANA PIPE WORKS.
G. R. PAYNE, *Secretary.*

TEXARKANA, TEX., *June 26, 1916.*

Hon. MORRIS SHEPPARD,
Washington, D. C.

DEAR SIR: We urge your best efforts to secure favorable report by the Committee on Interstate Commerce on Senate bill No. 5242, as follows:

A BILL To amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof, be, and the same is hereby, amended by adding, after the proviso in section one, the following: "*And provided further,* That nothing in this act, nor the exercise of any authority by the Interstate Commerce Commission by virtue thereof, shall absolve any railroad or other common carrier from obeying any rate, rule, regulation, or practice of any State with respect to the transportation of passengers or property, or the receiving, delivery, storage, or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory as aforesaid, unless and until such common carrier shall have secured the judgment of a court of competent jurisdiction holding such rate, rule, regulation, or practice imposed as aforesaid to be unreasonable.

The Southern Furniture Co., by C. M. Boush, general manager; Texarkana Pipe Works (not incorporated), G. R. Payne, secretary; Buhrman-Pharr Hardware Co., T. E. Pharr, secretary; Turner Paper Co., per J. O. Turner, president; Williams-Hubbard Peanut Co., by Paul Williams; Sanders Bros. Co., Eugene Sanders, president; Texarkana Pipe Works, F. E. Potts, traffic manager; Gulf Cooperage Co., S. C. Nancarron, manager; Hudgins Produce Co., W. P. Hudgins, president; The Texas Produce Co., F. Smith, superintendent.

Senator SHEPPARD. Mr. Morgan wishes to be heard briefly in conclusion.

The CHAIRMAN. Mr. Morgan, you may proceed.

STATEMENT OF MR. J. A. MORGAN—Resumed.

We argued before the commission here that the intrastate rates in Oklahoma moving south toward Texas, mile for mile, were less than the interstate rates. The intrastate rate from Louisiana through the Orange Gates, mile for mile, moving toward Texas, is less than the interstate rate. The intrastate rate from Arkansas points—I want to call your attention particularly here to one particular case. Take the town of Hope, Ark., a town of about 12,000 inhabitants, they have wholesale houses, a cotton compress, cottonseed oil mills, and the first-class rate from Hope, Ark., a distance of 20 miles into Texas, or 24 miles to a point over in Texas, is 27 cents. To Shreveport is asking on this same rate about 36 cents.

Here is the point I want to bring to your attention. If you grant the Interstate Commerce Commission the privilege of fixing the rates to, from, and between all points in Texas to cure a Shreveport discrimination, within 30 days after this hearing is closed, unless you provide some means to take care of it, the Interstate Commerce Commission will be swamped with complaints that will put them five years behindhand.

Louisiana is going to file one account, Oklahoma an account, and Arkansas an account just as soon as this hearing is over; the very minute it is over, unless there is some ground for it. Take the first-class rate, New Orleans to Lake Charles, 200 miles, 25 cents, while the first-class rate from Orange, Tex., to Lake Charles, 40 miles, is 40 cents. There is a case of discrimination. There is a case where the State of Louisiana says, "We are not going to let Texas get into Lake Charles and sell goods if we make a 30-cent rate into Lake Charles," and they do that in effect now. We have got hundreds and hundreds of such discriminations as that, and I want to state this: I talked with the examiner coming from New Orleans to Atlanta, Ga., the other day, who helped to write what is known as the Memphis case, or this Arkansas case, which has been referred to here to-day, and he said to

me in going into that case, in wrinitg that case, he found 10 discriminations against Texas in favor of Louisiana where he found 1 discrimination against Louisiana in favor of Texas. He said that to me himself.

Here is what I want to impress upon this committee's mind. Some remedy must be given in this final decision if you do not establish the point that it should be reviewed by a court; some remedy should be given in order not to swamp the Interstate Commerce Commission with these complaints, because they will certainly be put five years behind their work 30 days after the Shreveport decision is repealed. Everybody is waiting for it. Everybody all over the United States is watching it, and we have got to take care of that situation.

Just one more word, and I am through. I want to say in regard to the discrimination on peanuts, and Mr. Walter there referred to peanuts—1,400 cars of peanuts moving out of Texas to Shreveport, and they have got a peanut factory there that is a member, if you could so construe it, a member of the Peanut Trust. They have got peanut factories in other parts of the United States. Now, listen: They had you to believe here that the peanuts moving from Texas—that the rate was absolutely confiscatory; that they could not move the culls. When they have a milling and transit rate on peanuts from Texas points to all interstate points, and that milling and transit rate was absolutely the same to most of the consuming points as it is from Texas, the milling and transit rate——

Mr. WALTER. But with 30 per cent——

Mr. MORGAN. That is the culls; that is the loss at the mill. We are not to blame for that; Texas is not to blame for that.

Mr. WALTER. But if you lose it at 5 cents a hundred, and we lose it at 50 cents——

Mr. MORGAN. You do not say 50 cents. Was it not testified in the hearing in Houston——

Mr. WALTER. Forty and five-tenths cents.

Mr. MORGAN. Was it not testified that you moved those peanuts through Houston, and from Houston to Shreveport, and got a lower rate on them?

Mr. WALTER. No, you are thinking about guano.

Mr. MORGAN. I want to say this, though. I think you ought to be put right on this question. Only about 2 per cent of the peanuts that go into Shreveport are consumed in Shreveport. The other 98 per cent are moved out on the milling and transit rate, and that milling and transit rate is the same from the originating point in Texas to destination as it is if it was milled in transit at a point in Texas.

In other words, suppose a car of peanuts was to originate at Hempstead, Tex., and to be milled in transit at Dallas, and its destination was St. Louis, and another car moved from Hempstead to be milled in transit at Shreveport, the rate would be absolutely the same, not one cent difference. I want to call your attention to those things so you will understand them.

In regard to rates in and out bound, I prepared in this Shreveport hearing a list of about 100 commodities showing how much farther west on an in and outbound rate Shreveport could get into Texas that Houston could get in on that in and out bound rate, and I

have the evidence right down in my portfolio, a copy of it, that shows this on an average, and I have it here to prove it if necessary to present it to you, that Shreveport can average from 75 to 100 miles farther west on an in and out bound rate than Houston can go on an in and out bound rate, and these are the very classes or rates they are complaining about.

If you had a store at Houston and the chairman there had a store at Shreveport, if your store at Shreveport had a 30-cent in and out bound rate and Texas had a 50-cent in and out bound rate on that same commodity, and Shreveport could get all over Texas on an in and out bound rate for 10 cents less than you, what chance would you have to sell your goods, although you were located in Texas? You would not have any chance, because the Shreveport in and out bound rate makes a lower rate. And that is this condition.

Senator SHEPPARD. Mr. Chairman, I submit herewith some additional documents to be made a part of these hearings.

(The documents referred to are here printed in full, as follows:)

MEMPHIS, TENN., *June 29, 1916.*

FRANCIS G. NEWLANDS, *Washington, D. C.:*

The interests of this city and all border points would be seriously injured by the passage of bill 5242, introduced by Senator Sheppard. We therefore respectfully invoke your opposition thereto in hearing by committee to-morrow.

JAS. S. DAVANT,
Commissioner Memphis Freight Bureau.

MEMPHIS, TENN., *June 29, 1916.*

FRANCIS G. NEWLANDS, *Washington, D. C.:*

The passage of Senate bill 5242 would injuriously affect Memphis. May we not ask your opposition to the bill before the committee?

MEMPHIS MERCHANTS EXCHANGE,
By N. S. GRAVES, *Secretary.*

RETAIL MERCHANTS' ASSOCIATION OF TEXAS,
San Antonio, Tex., June 26, 1916.

The CHAIRMAN SENATE COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

DEAR SIR: I have been instructed to file with you a copy of the inclosed resolution, which was passed at the annual convention of the Retail Merchants' Association of Texas, an association consisting of business men and merchants engaged in all lines of mercantile effort.

The resolution explains itself, and we urge your favorable consideration of this matter.

Yours, very truly,

W. J. EDGECOMBE, *Secretary.*

RESOLUTION BY RETAIL MERCHANTS' ASSOCIATION OF TEXAS AT ANNUAL MEETING IN 1916, AT SAN ANTONIO.

Resolved, That we most earnestly indorse the Sheppard amendment to the act to regulate commerce to the end that our intrastate affairs may be left to the control of our State authorities and that the State be not deprived of its right under the Constitution and which has never been surrendered to the Federal Government.

Further, that we urge the Congress to speedily enact said amendment into law.

Further, that a copy of these resolutions be sent to Senator Sheppard, to our delegation in Congress, and the Senate Committee on Interstate Commerce.

Unanimously approved and entered in the records.

RESOLUTIONS.

The Chamber of Commerce of Austin, Tex., composed of 500 of the most representative business men of this city, through their board of directors, hereby indorse the amendment to the interstate commerce law introduced by Hon. Morris Sheppard, which law will prevent the Interstate Commerce Commission from exercising any undue authority over intrastate rates.

The city of Austin, as well as every other city in the State, considers it very imperative that this amendment become a law, and we urge our Representatives in Congress to take all action that seems wise in bringing about the passage of this amendment.

AUSTIN CHAMBER OF COMMERCE,
SAM SPARKS, *President*.
W. E. LONG, *Secretary*.

WASHINGTON, D. C., *July 1, 1916*.

Hon. FRANCIS G. NEWLANDS,
Chairman Senate Interstate Commerce Committee.

DEAR SIR: In accordance with my request to file some additional papers and your promise that I could do so, I beg to inclose you a statement which I requested Mr. R. D. Bowen, of Paris, Tex., to prepare. As is fortunate, Mr. Bowen is in Washington.

Mr. Earle B. Mayfield was in error when he stated that Mr. Bowen had written all the letters for me on freight-rate matters in Texas and to the Texas Railroad Commission.

Mr. Bowen has aided me and the other members of our committee greatly in this work and has done more for the farmers of Texas than any living man known by me, and I desire his statement to go on record so as to keep it in correct shape so it will state facts.

Please mail me a copy of the record when it is completed, and also one to Mr. R. D. Bowen, Paris, Tex.

N. R. DORSEY, *Henderson, Tex.*

WASHINGTON, D. C., *July 1, 1916*.

Hon. FRANCIS G. NEWLANDS,
Chairman Senate Interstate Commerce Committee.

DEAR SIR: At the requert of Mr. N. R. Dorsey, of Henderson, Tex., and upon information received from Senator Morris Sheppard, I beg to give the following facts as to my connection with the subject of freight rates and certain railroad legislation in Texas:

Some eight or nine years ago, a line of railroad was contemplated to be constructed through certain counties in northeast Texas and through Lamar County and the city of Paris, where I then resided and which is still my domicile; and in order to complete this line, the railroad in question had introduced into our legislature a merger bill.

The Paris Board of Trade, of which I was a member, appointed a committee to aid in securing favorable action on the merger bill, and I was a member of said committee.

The Lamar County Farmers' Union, of which I was a member, also appointed a committee for the same purpose and I was made chairman of said committee, and we commenced active work to accomplish our wishes.

I am of the opinion that no member of either committee ever discussed this question with any railroad employees prior to the commencement of our work, although possibly some did, but I did not.

We commenced quite a vigorous campaign and were informed that the railroad companies would pay the expenses of what we found it necessary to expend, and possibly some persons who were engaged to perform certain features of the work may have been paid a small sum for their services; but, as far as I know, not a single member of our committee received $1 for services, and I never heard of any of them requesting pay.

I know that I did not receive $1 for compensation.

I filed at the time an itemized statement of the expenditures, and I assume that this statement is attached to the vouchers which were issued in my favor for something like fourteen, or possibly fifteen, or maybe sixteen hundred dollars, and I understand that Commissioner E. B. Mayfield, of the Texas Railroad Commission, procured copies of these vouchers and now have them in his possession, and if so they will speak for themselves.

At a recent hearing of the Texas Railroad Commission at Austin Commissioner E. B. Mayfield asked me in regard to these expenditures which were for expenses incurred, and he asked me if I was not paid some additional sum for services, and I replied that I had not been.

I understand that he also stated to your committee that I had acknowledged that I wrote all letters which Mr. N. R. Dorsey had mailed under his signature to the Texas Railroad Commission and on the subject of freight rate to other parties.

Formerly I rendered considerable assistance to Mr. Dorsey and others in this matter and have aided in framing many letters, but I have seen letters written by him and copies of letters which he told me he had written on the subject and of which I had no knowledge whatever prior to their being written and mailed.

It strikes me that as far as the present bill before your committee is concerned the above facts have no bearing whatever; but the above is in accordance with the testimony which I gave at Austin, and if that testimony has been properly written up it will tally with the above. And if Mr. Mayfield has made the statements as reported to me by the above-named gentleman, his memory must be at fault.

While I aided very materially in former years in all the work done in the various district farmers' unions of Texas in traffic matters, I have not done so much during later years as Mr. Dorsey and others have handled this feature to quite an advantage, and I assume that no intelligent person would dispute the fact but what it is quite essential for farmers to give traffic matters their personal attention and to study this question for themselves.

I also beg to add that I refused to take an active part in the bill before your committee. In fact, had never heard of it until called to my attention by others, and I didn't see the bill until a copy was handed to me in Senator Sheppard's office this morning. If I can give you any more information, command me.

Yours, very truly,

R. D. BOWEN, *Paris, Tex.*

The CHAIRMAN. This concludes this hearing, so the committee will stand adjourned.

(Thereupon, at 11 o'clock p. m., the committee adjourned subject to the call of the chairman.)

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TITLE